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No. 91-577

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

BONITA PASCHAL, DANIEL DODSON, PAUL BUCASAS and all others similarly situated,

Petitioners,

v.

LOLETA DIDRICKSON, the Director of the Illinois Department of Employment Security; STELLA CUTHBERT, the Commissioner of the Illinois Department of Employment Security; LYNN MARTIN, the Secretary of the United States Department of Labor; ROBERTS T. JONES, the Assistant Secretary for the Employment and Training Division of the United States Department of Labor; and the UNITED STATES DEPARTMENT OF LABOR,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

APPENDIX VOLUME II TO THE PETITION FOR WRIT OF CERTIORARI

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26 § 3301

§ 3301. Rate of tax

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to

(1) 6.2 percent in the case of calendar years 1988, 1989 and 1990; or

(1) 6.0 percent in the case of calendar year 1991 and each calendar year thereafter; of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

§ 3302. Credits against tax

(a) **Contributions to state unemployment funds. --**

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contribu-

tions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31, of such year.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on

account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of the State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been

made on the date the return for the taxable year was filed under section 6071.

(5) In the case of wages paid by the trustee of an estate under title 11 of the United States Code, if the failure to pay contributions on time was without fault by the trustee, paragraph (3) shall be applied by substituting "100 percent" for "90 percent".

(b) **Additional credit.** -- In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid

by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower.

(c) **Limit on total credits.**--

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section

for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced --

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax

imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any), multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the denominator

of which is the wage base under this chapter, by which--

(i) 2.7 percent multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there

is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which--

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for the purposes of such sentence, January 1, 1980, shall be deemed to be

the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974. Subparagraph (C) shall not apply with respect to any taxable year to which it would otherwise apply (but subparagraph (B) shall apply to such taxable year) if the Secretary of Labor determines (on or before November 10 of such taxable year) that the State meets the requirements of subsection (f)(2)(B) for such taxable year.

(3) If the Secretary of Labor determines that a State, or State agency, has not-

(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 15, 1975, or

(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of the section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 7-1/2 percent of the tax imposed with respect to wages paid by such taxpayer

during such year which are attributable to such State.

(d) **Definitions and special rules relating to subsection (c).** --

(1) **Rate of tax deemed to be 6 percent.**-In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 6 percent in lieu of the rate provided by such section.

(2) **Wages attributable to a particular State.**- For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary) to be attributable to such State.

(3) **Additional taxes inapplicable where advances are repaid before November 10**

of taxable year.- Paragraph (2) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) **Average employer contribution rate.**-For purposes of subparagraphs (B) and (C) of subsection (c)(2), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing-

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B)(i) for purposes of subparagraph (B) of subsection (c)(2), the total of the wages (as determined without any limitation on amount) attributable to such State subject

to contributions under this chapter with respect to such calendar year, and

(ii) for purposes of subparagraph (C) of subsection (c)(2), the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(2), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are

to be used solely in the payment of unemployment compensation,

(5) **5-year benefit cost rate.-** For purposes of subparagraph (C) of subsection (c)(2), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing-

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar preceding such taxable year.

(6) **Rounding.-** If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(2) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) **Determination and certification of percentages.-** The percentage referred to in subsection (c)(2)(B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as

the Secretary of Labor deems necessary to the performance of his duties under this section.

(e) **Successor employer.-** Subject to the limits provided by subsection (c), if-

(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the

credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

(f) **Limitation on credit reduction.-**

(1) **Limitation.-** In the case of any State which meets the requirements of paragraph (2) with respect to any taxable year the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers subject to the unemployment

compensation law of such State shall not exceed the greater of-

(A) the reduction which was in effect with respect to such State under subsection (c)(2) for the preceding taxable year, or

(B) 0.6 percent of the wages paid by the taxpayer during such taxable year which are attributable to such State.

(2) **Requirements.-** The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines (on or before November 10 of such taxable year) that-

(A) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior

to the date of the enactment of this subsection) which has resulted or will result in a reduction in such State's unemployment tax effort (as defined by the Secretary of Labor in regulations),

(B) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a net decrease in the solvency of the State unemployment compensation system (as defined by the Secretary of Labor in regulations),

(C) the State unemployment tax rate for the taxable year equals or exceeds the average benefit cost

ratio for calendar years in the 5-calendar year period ending with the last calendar year before the taxable year, and

(D) the outstanding balance of such State of advances under title XII of the Social Security Act on September 30 of such taxable year was not greater than the outstanding balance for such State of such advances on September 30 of the third preceding taxable year (or, for purposes of applying this subparagraph to taxable year 1983, September 30, 1981).

The requirements of subparagraphs (C) and (D) shall not apply to taxable years 1981 and 1982.

(3) **Credit reductions for subsequent years.-** If the credit reduction under subsection (c)(2) is limited by reason

of paragraph (1) of this subsection for any taxable year, for purposes of applying subsection (c)(2) to subsequent taxable years (including years after 1987), the taxable year for which the credit reduction was so limited (and January 1 thereof) shall not be taken into account.

(4) **State unemployment tax rate.-** For purposes of this subsection-

(A) **In general.-** The State unemployment tax rate for any taxable year is the percentage obtained by dividing-

(i) the total amount of contributions paid into the State unemployment fund with respect to such taxable year, by

(ii) the total amount of the remuneration subject to con-

tributions under the State unemployment compensation law with respect to such taxable year (determined without regard to any limitation on the amount of wages subject to contribution under the State law).

(B) **Treatment of additional tax under this chapter.-**

(i) **Taxable year 1983.-** In the case of taxable year 1983, any additional tax imposed under this chapter with respect to any State by reason of subsection (c)(2) shall be treated as contributions paid into the State unemployment fund with respect to such taxable year.

(ii) **Taxable year 1984.**- In the case of taxable year 1984, any additional tax imposed under this chapter with respect to any State by reason of subsection (c)(2) shall (to the extent such additional tax is attributable to a credit reduction in excess of 0.6 of wages attributable to such State) be treated as contributions paid into the State unemployment fund with respect to such taxable year.

(5) **Benefit cost ratio.**- For purposes of this subsection-

(A) **In general.**- The benefit cost ratio for any calendar year is the percentage determined by dividing-

(i) the sum of the total of the compensation paid under

the State unemployment compensation law during such calendar year and any interest paid during such calendar year on advances made to the State under title XII of the Social Security Act, by

(ii) the total amount of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year (determined without regard to any limitation on the amount of remuneration subject to contribution under the State law).

(B) **Reimbursable benefits not taken into account.**- For purposes of subparagraph (A), compensation

shall not be taken into account to the extent-

(i) the State is entitled to reimbursement for such compensation under the provisions of any Federal law, or

(ii) such compensation is attributable to services performed for a reimbursing employer.

(C) **Reimbursing employer.** The term "reimbursing employer" means any governmental entity or other organization (or group of governmental entitles or any other organizations) which makes reimbursements in lieu of contributions to the State unemployment fund.

(D) **Special rules for years before 1985.-**

(i) **Taxable year 1983.-** For purposes of determining whether a State meets the requirements of paragraph (2)(C) for taxable year 1984, only regular compensation (as so defined) shall be taken into account for purposes of determining the benefit ratio for any preceding calendar year before 1981.

(E) **Rounding.-** If any percentage determined under subparagraph (A) is not a multiple of .1 percent, such percentage shall be reduced to the nearest multiple of .1 percent.

(6) **Reports.-** The Secretary of Labor may, by regulations, require a State to furnish such information at such time

and in such manner as may be necessary for purposes of this subsection.

(7) **Definitions and special rules.-** The definitions and special rules set forth in subsection (d) shall apply to this subsection in the same manner as they apply to subsection (c).

(8) **Partial limitation.-**

(A) In the case of a State which would meet the requirements of this subsection for a taxable year prior to 1986 but for its failure to meet one of the requirements contained in subparagraph (C) or (D) of paragraph (2), the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction

is in effect for taxpayers in such State) shall be reduced by 0.1 percentage point.

(B) In the case of a State which does not meet the requirements of paragraph (2) but meets the requirements of subparagraphs (A) and (B) of paragraph (2) and which also meets the requirements of section 1202(b)(8)(B) of the Social Security Act with respect to such taxable year, the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be further reduced by an additional 0.1 percentage point.

(C) In no case shall the application of subparagraphs (A) and (B) reduce the credit reduction otherwise applicable under subsection (c)(2) below the limitation under paragraph (1).

(g) **Credit reduction not to apply when state makes certain repayments.-**

(1) **In general.-** In the case of any State which meets requirements of paragraph (2) with respect to any taxable year, subsection (c)(2) shall not apply to such taxable year; except that such taxable year (and January 1 of such taxable year) shall (except as provided in subsection (f)(3)) be taken into account for purposes of applying subsection (c)(2) to succeeding taxable years.

(2) **Requirements.-** The requirements of this paragraph are met by any State

with respect to any taxable year if the Secretary of Labor determines that-

(A) the repayments during the 1-year period ending on November 9 of such taxable year made by such State of advances under title XII of the Social Security Act are not less than the sum of-

(i) the potential additional taxes for such taxable year, and

(ii) any advances made to such State during such 1-year period under such title XII,

(B) there will be sufficient amounts in the State unemployment fund to pay all compensation during the 3-month period beginning on November 1 of such taxable year without receiving any advance under

title XII of the Social Security Act, and

(C) there is a net increase in the solvency of the State unemployment compensation system for the taxable year attributable to changes made in the State law after the date on which the first advance taken into account in determining the amount of the potential additional taxes was made (or, if later, after the date of the enactment of this subsection) and such net increase equals or exceeds the potential additional taxes for such taxable year.

(3) **Definitions.-** For purposes of paragraph (2)-

(A) **Potential additional taxes.-** The term "potential additional taxes" means, with respect to any

State for any taxable year, the aggregate amount of the additional tax which would be payable under this chapter for such taxable year by all taxpayers subject to the unemployment compensation law of such State for such taxable year if paragraph (2) of subsection (c) had applied to such taxable year and any preceding taxable year without regard to this subsection but with regard to subsection (f).

(B) **Treatment of certain reductions.-** Any reduction in the State's balance under section 901(d)(1) of the Social Security Act shall not be treated as a repayment made by such state.

(4) **Reports.-** The Secretary of Labor may require a State to furnish such information at such time and in such

manner as may be necessary for purposes of paragraph (2).

§ 3303. Conditions of additional credit allowance

(a) **State standards.-** A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law-

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) no reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless-

(A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) the balance of such account amounts to not less than 2-1/2 percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) no reduced rate of contributions to a reserve account is permitted to a

person (or group of persons) having individuals in his (or their) employ unless-

(A) compensation has been payable from such account throughout the year preceding the computation date, and

(B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) the balance of such account amounts to not less than 2-1/2 percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis (i) the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis

other than as permitted by paragraph (1), (2) or (3).

(b) **Certification by the Secretary of Labor with respect to additional credit allowance.-**

(1) On October 31 of each calendar year, the Secretary of Labor shall certify to the Secretary of the Treasury the law of each State (certified by the Secretary of Labor as provided in section 3304 for the 12-month period ending on such October 31), with respect to which he finds that reduced rates of contributions were allowable with respect to such 12-month period only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to

more than one type of fund or account were allowable with respect to any 12-month period ending on October 31, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on such October 31, certify to the Secretary of the Treasury only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such 12-month period under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to

be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowable under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall

not withhold his certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any 12-month period ending on October 31 pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such 12-month period, failed to comply substantially with any such provision.

(c) **Definitions.-** As used in this section-

(1) **Reserve account.-** The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account,

unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) **Pooled fund.-** The term "pooled fund" means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) **Partially pooled account.-** The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which

part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) **Guaranteed employment account.-** The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency.

(A) guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaran-

ties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensaticn under the State law.

(5) **Year.-** The term "year" means only 12 consecutive calendar months.

(6) **Balance.-** The term "balance", with respect to a reserve account or a guaranteed employment account, means the

amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) **Computation date.-** The term "computation date" means the date, occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) **Reduced rate.-** The term "reduced rate" means a rate of contributions lower

than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

(d) **Voluntary contributions.-** A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

(e) **Payments by certain nonprofit organizations.-** A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or a group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation

attributable under the State law to service performed in the employ of such organization (or group).

(f) **Transition.-** To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies, a State law may provide that an organization (or group of organizations) which elects before April 1, 1972, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before January 1, 1969, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to service performed in its employ, until the total of such compensation equals the amount-

(1) by which the contributions paid by such organization (or group) with respect to a period before the election provided by section 3309(a)(2), exceed

(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of wages by it or service performed in its employ, whichever is appropriate.

(g) **Transitional rule for Unemployment Compensation Amendments 1976.-** To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies by reason of the enactment of the Unemployment Compensation Amendments of 1976, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law with respect to such service, to

make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before the date of the enactment of this subsection, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to such service performed in its employ, until the total of such compensation equals the amount-

(1) by which the contributions paid by such organization (or group) on the basis of wages for such service with respect to a period before the election provided by section 3309(a)(2), exceed

(2) the unemployment compensation for the same period which was charged to the experience-rating account of such

organization (or group) or paid under the State law on the basis of such service performed in its employ or wages paid for such service, whichever is appropriate.

§ 3304. Approval of State laws

(a) **Requirements.-** The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that-

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of

sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (42 U.S.C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that-

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash

benefits to individuals with respect to their disability, exclusive of expenses of administration;

(B) the amounts specified by section 903(c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under

a program approved by the Secretary of Labor; and

(D) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions;

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period be-

tween two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms,

(ii) with respect to services in any other capacity for an educational institutional to which section 3309(a)(1) applies-

(I) compensation payable on the basis of such services

shall be denied to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that

(II) if compensation is denied to any individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for that educational institution for the second of such academic

years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I),

(ii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable

assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess,

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity shall be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions, and

(v) with respect to services to which section 3309(a)(1) applies, if such services are provided to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) through (iv), and

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

(8) compensation shall not be denied to an individual for any week because

he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

(9)(A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the unemployment compensation law

of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with

a claim for compensation, or receipt of disqualifying income;

(11) extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;

(12) no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy;

(13) compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there

is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act),

(B) any data or information required of individuals applying for compensation

to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation, and

(C) in the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence;

(15) the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero)

by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such work except that-

(A) the requirement of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if-

(i) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

(ii) in the case of such a payment not made under the Social Security Act or the

Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

(B) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;

(16)(A) wage information contained in the records of the agency administering the State law which is necessary (as determined by the Secretary of Health, Education, and Welfare in regulations) for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved under part A of title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes, and

(B) such safeguards are established as are necessary (as determined by the Secretary of Health, Education, and Welfare in regulations) to insure that such information is used only for the

purposes authorized under subparagraph (A);

(17) any interest required to be paid on advances under title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund; and

(18) all the rights, privileges, or immunities conferred by such law or by act done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) **Notification.-** The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) **Certification.-** On October 31 of each taxable year the Secretary of Labor shall certify to the Secretary of the Treasury each

State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the 12-month period ending on such October 31 failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year, the Secretary of Labor

shall not certify any State which, after reasonably notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by law to be included therein (including provisions relating to the Federal-State Extended Unemployment Compensation Act of 1970 (or any amendments thereto) as required under subsection(a)(11)), or has, with respect to the twelve-month period ending on such October 31, failed to comply substantially with any such provision.

(d) **Notice of noncertification.-** If at any time the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

(e) **Change of law during 12-month period.-** Whenever-

(1) any provision of this section, section 3302, or section 3303 refers to a 12-month period ending on October 31 of a year, and

(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period,

then such provision shall be applied by taking into account for each such portion the law applicable to such portion.

(f) **Definition of institution of higher education.-** For purposes of subsection (a)(6), the term "institution of higher education" means an educational institution in any State which-

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for it which awards bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

Federal-State Extended Unemployment Compensation Act of 1970

Sec. 201 [Short title]. This title may be cited as the "Federal-State Extended Unemployment Compensation Act of 1970".

Sec. 202 [Payment of extended compensation]. (a) **[State law requirements]** (1) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1986 [(formerly I.R.C. 1954) subsec. (a)(11) of this section] a State law shall provide that payment of extended compensation shall be made, for any week of unemployment which begins in the individual's eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation

with respect to such week under the unemployment compensation law of Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual ha received all regular compensation available to him based on employment or wages during his base period, or (B) when his rights to such compensation having terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(2) Except where inconsistent with the provisions of this title [Title II of Pub.L. 91-373], the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

(3)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act [Title II of Pub.L. 91-373] shall not be made to any individual for any week of unemployment in his eligibility period-

(i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c) [probably means subpar. (C)] or fails to apply for any suitable work to which he was referred by the State agency; or

(ii) during which he fails to actively engage in seeking work, unless such individual is not actively engaged in seeking work because such individual is, as determined in accordance with State law-

(I) before any court of the United States or any State pursuant

to a lawfully issued summons to appear for jury duty (as such term amy be defined by the Secretary of Labor), or

(II) hospitalized for treatment of an emergency or a life-threatening condition (as such term amy be defined by such Secretary),

if such exemption in clauses (i) and (ii) apply for recipients of regular benefits, and the State chooses to apply such exemptions for recipients of extended benefits.

(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in clause (i) or (ii) of subparagraph (A), the individual shall be ineligible to receive extended compensation for any week which begins during a period which-

(i) begins with the week following the week in which such failure occurs, and

(ii) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(c) [subsec. (b)(1)(C)]) for his benefit year.

(C) For purposes of this paragraph, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonable short period

are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law.

(D) Extended compensation shall not be denied under clause (i) of subparagraph (A) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work-

(i) if the gross average weekly remuneration payable to such individual for the position does not exceed the sum of-

(I) the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C)) for his benefit year, plus

(II) the amount (if any) of supplemental unemployment compensa-

tion benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986 [section 501(c)(17)(D) of this title]) payable to such individual for such week;

(ii) if the position was not offered to such individual in writing and was not listed with the State employment service;

(iii) if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions of subparagraphs (C) and (E); or

(iv) if the position pays wages less than the higher of-

(I) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 [section

206(a)(1) of Title 29, Labor], without regard to any exemption; or

(II) any applicable State or local minimum wage.

(E) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking working during any week if-

(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

(F) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1986 [subsec. (a)(11) of this section], a State law shall provide for referring applicants for benefits

under this Act [Title II of Pub.L. 91-373] to any suitable work in which clauses (i), (ii), (iii), and (iv) of subparagraph (D) would not apply.

(4) No provision of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(5) Notwithstanding the provisions of paragraph (2), an individual shall not be eligible for extended compensation unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employ-

ment, or the equivalent in insured wages. For purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or 1-1/2 times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest (or one such quarter if his wages were the same for more than one such quarter). The State shall by law provide which one of the foregoing methods of measuring employment and earnings shall be used in that State.

(6) No payment shall be made under this Act [Title II of Pub.L. 91-373] to any State in respect of any extended compensation or shareable regular compensation paid to any individual for any week if, under the rules of paragraphs (3), (4) and (5) extended

compensation would not have been payable to such individual for such week.

(b) [**Individuals' compensation accounts**] (1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in such account shall not be less than whichever of the following is the least:

(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him during such benefit year under such law,

(B) thirteen times his average weekly benefit amount, or

(C) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed

paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provided) be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

(c) [**Cessation of extended benefits when paid under an interstate claim in a state where extended benefit period is not in effect**]. (1) Except as provided in paragraph (2), payment of extended compensation shall

not be made to any individual for any week if-

(A) extended compensation would (but for this subsection) have been payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and

(B) an extended benefit period is not in effect for such week in such State.

(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended compensation is payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

(3) Section 3304(a)(9)(A) of the Internal Revenue Code of 1986 [subsec. (a)(9)(A) of this section] shall not apply to any denial

of compensation required under this subsection.

Sec. 203 [Extended benefit period]. (a) **[Beginning and ending]** For purposes of this title [Title II of Pub. L. 91-373], in the case of any State, an extended benefit period-

(1) shall begin with the third week after the first week for which there is a State "on" indicator; and

(2) shall end with the third week after the first week for which there is a State "off" indicator.

(b) **[Special rules]** (1) In the case of any State-

(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

(B) no extended benefit period may begin before the fourteenth week after

the close of a prior extended benefit period with respect to such State.

(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(c) **[[Eligibility period]** For purposes of this title [Title II of Pub.L. 91-373], an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

(d) **[State "on" and "off" indicators]** For purposes of this section-

(1) There is a State "on" indicator for a week if the rate of insured

unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks-

(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) equaled or exceeded 5 per centum.

(2) There is a State "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) is not satisfied.

Effective with respect to compensation for weeks of unemployment beginning after March 30, 1977 (or, if later, the date established pursuant to State law), the State may by law

provide that the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and (ii) the figure "3" contained in subparagraph (B) thereof were "6"; except that, notwithstanding any such provision of State law, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator. For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

(e) **[Rate of insured unemployment; covered employment]** (1) For purposes of subsections (d) the term "rate of insured unemployment" means the percentage arrived at by dividing-

(A) the average weekly number of individuals filing claims for regular compensation for weeks of unemployment with respect to the specified period as determined on the basis of the reports made by the State agency to the Secretary, by

(B) the average monthly covered employment for the specified period.

(2) Determinations under subsection (d) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

Sec. 204 [Payments to States]. (a) **[Amount payable]** (1) There shall be paid to each

State an amount equal to one-half of the sum of-

(A) the sharable extended compensation, and

(B) the sharable regular compensation paid to individuals under the State law.

(2) No payment shall be made to any State under this subsection in respect of compensation (A) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, (B) paid for the first week in an individual's eligibility period for which extended compensation or shareable regular compensation is paid, if the State law of such State provides for payment at any time or under any circumstance of regular compensation to an individual for his first week of otherwise compensable unemployment, (C) paid for any week with respect to which such benefits are not payable

by reason of section 233(d) of the Trade Act of 1974 [section 2293(d) of Title 19, Custom Duties], or (D) paid to an individual with respect to a week of unemployment to the extent that such amount exceeds the amount of such compensation which would be paid to such individual if such State had a benefit structure which provided that the amount of compensation otherwise payable to any individual for any week shall be rounded (if not a full dollar amount) to the nearest lower full dollar amount.

(3) The amount which, but for this paragraph, would be payable under this subsection to any State in respect of any compensation paid to an individual whose base period wages include wages for services to which section 3306(c)(7) of the Internal Revenue Code of 1986 [section 3306(c)(7) of this title] applies shall be reduced by an amount which

bears the same ratio to the amount which, but for this paragraph, would be payable under this subsection to such State in respect of such compensation as the amount of the base period wages attributable to such services bears to the total amount of the base period wages.

(b) **[Sharable extended compensation]** For purposes of subsection (a)(1)(A), extended compensation paid to an individual for weeks of unemployment in such individual's eligibility period is sharable extended compensation to the extent that the aggregate extended compensation paid to such individual with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A), (B), and (C) of section 202(b)(1).

(c) **[Sharable regular compensation]** For purposes of subsection (a)(1)(B), regular

compensation paid to an individual for a week of unemployment is sharable regular compensation-

(1) if such week is in such individual's eligibility period (determined under section 203(c)), and

(2) to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to him with respect to prior weeks of unemployment in the benefit year, exceeds twenty-six times (and does not exceed thirty-nine times) the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to such individual under the State law in such benefit year.

(d) **[Payment on calendar month basis]** There shall be paid to each State either in advance or by way of reimbursement, as may be deter-

mined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title [Title II of Pub.L. 91-373] for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

(e) **[Certification]** The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in

accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

Sec. 205 [Definitions]. For purposes of this title [Title II of Pub.L. 91-373]-

(1) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(2) The term "regular compensation" means compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. Chapter 85) [section 8501 et seq. of Title 5, Government Organization and Employees], other than extended compensation and additional compensation.

(3) The term "extended compensation" means compensation (including additional

compensation and compensation payable pursuant to 5 U.S.C. chapter 8501 [section et seq. of Title 5, Government Organization and Employees]) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title [Title II of Pub.L. 91-373] with respect to the payment of extended compensation.

(4) The term "additional compensation" means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(5) The term "benefit year" means the benefit year as defined in the applicable State law.

(6) The term "base period" means the base period as determined under applicable State law for the benefit year.

(7) The term "Secretary" means the Secretary of Labor of the United States.

(8) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico, and the Virgin Islands.

(9) The term "State agency" means the agency of the State which administers its State law.

(10) The term "State law" means the unemployment compensation law of the State, approved by the Secretary under section 3304 of the Internal Revenue Code of 1986 [this section].

(11) The term "week" means a week as defined in the applicable State law.

Sec. 206 [Approval of State laws]. [Section 206 amended subsec. (a) of this section by

adding par. (11) thereof. Such amendment has been executed to the text of subsec. (a) and is therefore not set out here.]

Sec. 207 [Effective dates]. (a) Except as provided in subsection (b)-

(1) in applying section 203, no extended benefit period may begin with a week beginning before January 1, 1972; and

(2) section 204 shall apply only with respect to weeks of unemployment beginning after December 31, 1971.

(b)(1) In the case of a State law approve[d] under section 3304(a)(11) of the Internal Revenue Code of 1986 [subsec. (a)(11) of this section] such State law may also provide that an extended benefit period may begin with a week established pursuant to such law which begins earlier than January 1, 1972,

but not earlier than 60 days after the date of the enactment of this Act [Aug. 10, 1970].

(2) For purposes of paragraph (1), with respect to weeks beginning before January 1, 1972, the extended benefit period for the State shall be determined under section 203(a) solely by reference to the State "on" indicator and the State "off" indicator.

(3) In the case of a State law containing a provision described in paragraph (1), section 204 shall also apply with respect to weeks of unemployment in extended benefit periods determined pursuant to paragraph (1).

(c) Section 3304(a)(11) of the Internal Revenue Code of 1954 [subsec. (a)(11) of this section] (as added by section 206) shall not be a requirement for the State law of any State-

(1) in the case of any State the legislature of which does not meet in

a regular session which closes during the calendar year 1971, with respect to any week of unemployment which begins prior to July 1, 1972; or

(2) in the case of any other State, with respect to any week of unemployment which begins prior to January 1, 1972.

Federal Supplemental Compensation Act of 1982

SHORT TITLE

Sec. 601. This subtitle may be cited as the "Federal Supplemental Compensation Act of 1982".

FEDERAL-STATE AGREEMENTS

Sec. 602. (a) Any State which desires to do so may enter into and participate in an agreement with the Secretary of Labor (hereinafter in this title referred to as the "Secretary") under this subtitle. Any State which is a party to an agreement under this subtitle may upon providing thirty days' written notice to the Secretary, terminate such agreement.

(b) Any such agreement shall provide that the State agency of the State will make payments of Federal supplemental compensation-

(1) to individuals who-

(A) have exhausted all rights to regular compensation under the State law;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (and is not paid or entitled to be paid any additional compensation under any such State or Federal law); and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada;

(2) for any week of unemployment which begins in the individual's period of eligibility.

except that no payment of Federal supplemental compensation shall be made to any individual for any week of unemployment which begins more

than two years after the end of the benefit year for which he exhausted his rights to regular compensation.

(c) For purposes of subsection (b)(1) an individual shall be deemed to have exhausted his rights to regular compensation under a State law when-

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period; or

(B) his rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) For purposes of any agreement under this subtitle-

(1) the amount of the Federal supplemental compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to him during his benefit year under the State law for a week of total unemployment.

(2) the terms and conditions of the State law which apply to claims for extended compensation and to the payment thereof shall apply to claims for Federal supplemental compensation and the payment thereof; except where inconsistent with the provisions of this subtitle or with the regulations of the Secretary promulgated to carry out this subtitle;

(3) the maximum amount of Federal supplemental compensation payable to any

individual for whom an account is established under subsection (e) shall not exceed the lesser of (A) the amount established in such account for such individual, or (B) in the case of an individual filing a claim under the interstate benefit payment plan for Federal supplemental compensation, the amount which would have been established in such account if the amount established in such account were determined by reference to the applicable limit under subparagraph (A)(ii) of subsection (e)(2) applicable in the State in which the individual is filing such interstate claim under the interstate benefit payment plan for the week in which he is filing such claim.

(e)(1) Any agreement under this subtitle with a State shall provide that the State will

establish, for each eligible individual who files an application for Federal supplemental compensation, a Federal supplemental compensation account with respect to such individual's benefit year.

(2)(A)(i) Except as provided in subparagraph (B), the amount established in such account shall be equal to the lesser of-

(I) 55 per centum of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation, or

(II) the applicable limit times his average weekly benefit amount for his benefit year.

(ii) For purposes of clause (i)-

(I) in the case of an account from which Federal supplemental compensation was payable to an individual for a week beginning before October 19, 1983, the applicable limit shall be the applicable limit in effect in the State under this paragraph (as in effect on the day before the date of the enactment of the Federal Supplemental Compensation Amendments of 1983 [Pub.L. 98-135, Oct. 24, 1983, 97 Stat. 857], for the last week beginning before October 19, 1983, or

(II) in the case of an account from which Federal supplemental compensation is first payable for a week beginning after October 18, 1983, the applicable limit shall be the applicable limit determined under the following table with respect to the first week for which

Federal supplemental compensation is payable from such account:

In the case of weeks during a:	The applicable limit is:
6-percent period	14
5-percent period	12
4-percent period	10
Low-unemployment period	8.

(B) In the case of any account from which Federal supplemental compensation was first payable for a week which begins after March 31, 1983, and before October 19, 1983, the amount established in such account under subparagraph (A) shall be increased by the individual's additional entitlement. In no event shall such increase result in the individual's receiving more Federal supplemental compensation for weeks beginning after October 18, 1983, than the subparagraph (A) entitlement.

(C) For purposes of subparagraph (B) and this subparagraph-

(i) The term "additional entitlement" means the lesser of-

(I) 3/4 of the subparagraph (A) entitlement, or

(II) the individual's average weekly benefit amount for the benefit year multiplied by the applicable limit determined under clause (ii).

(ii) The applicable limit determined under this clause is-

(I) 5 if all of the amount in the individual's Federal supplemental compensation account (determined without regard to subparagraph (B)) is payable to the individual for weeks beginning before October 18, 1983, and

(II) in the case of an individual not described in subclause (I), 4 (2 if the State is not a 4-percent period or a low-unemployment period for the first week beginning after October 18, 1983).

(iii) The term "subparagraph (A) entitlement" means the amount which would have been established in the account if Federal supplemental compensation were first payable from such account for the first week beginning after October 18, 1983.

(3)(A) For purposes of this subsection, the terms "6-percent period", "5-percent period", "4-percent period", and "low-unemployment period", mean, with respect to any State, the period which-

(i) begins with the third week after the first week for which the applicable trigger is on, and

(ii) ends with the second week after the first week for which the applicable trigger is off.

(B)(i) In the case of a 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, the applicable trigger is on for any week if-

(I) the rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls within the applicable range, or

(II) the rate of insured unemployment in the State for the period consisting of the last week beginning in the second calendar quarter ending before the week for which the trigger determination is

being made and all weeks preceding such last week which began on or after January 1, 1982, equals or exceeds 5.5 percent in the case of a 6-percent period (or, in the case of a 5-percent period, equals for exceeds 4.5 percent but is less than 5.5 percent).

Subclause (II) shall not apply in the case of a 4-percent period or low-unemployment period.

(ii) In the case of a 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, the applicable trigger is off for any week if subclause (I) of clause (i) is not satisfied (or in the case of a 6-percent period or a 5-percent period, both subclauses (I) and (II) of clause (i) are not satisfied).

(iii) In the case of any 5-percent period, 4-percent period, or low-unemployment period, as the case may be, notwithstanding clauses (i) and (ii) the applicable trigger shall be off for any week if the applicable trigger for a period with higher applicable limit is on for such week.

(C) For purposes of this paragraph, the applicable range is as follows:

In the case of a:	The applicable range is:
6-percent period	A rate equal to or exceeding 6 percent.
5-percent period	A rate equal to or exceeding 5 percent but less than 6 percent.
4-percent period	A rate equal to or exceeding 4 percent but less than 5 percent.
Low-unemployment period	A rate less than 4 percent.

(D)(i) No 6-percent period, 5-percent period, 4-percent period, or low-unemployment period,as the case may be, which is in effect

for the first week beginning after October 18, 1983, or any week thereafter, shall last for a period of less than 13 weeks beginning after October 18, 1983.

(ii) The applicable limit in any State shall not be reduced or increased by more than 2 during any 13-week period beginning with the week for which such a reduction (or increase) would otherwise take effect. The preceding sentence shall not apply to any increase (or decrease) which takes effect for the first week beginning after October 18, 1983.

(E) For purposes of this subsection-

(i) The rate of insured unemployment for any period shall be determined in the same manner as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 [section 203 of Pub.L. 91-373, set out as a note under this

section]; except that, for purposes of determining the rate of insured unemployment for the period described in subparagraph (B)(i)(II), the rate of insured unemployment shall be determined by reference to the average monthly covered employment under the State law for so much of such period as does not fall in the last 6 months thereof.

(ii) The amount of an individual's average weekly benefit amount shall be determined in the same manner as determined for purposes of section 202(b)(1)-(C) of such Act [section 202(b)(1)(C) of Pub.L. 91-373, set out as a note under this section].

(4) The amount of Federal supplemental compensation payable to an eligible individual shall not exceed the amount in such individu-

al's account established under this subsection.

(5)(A) Except as provided in subparagraph (B) the maximum amount of Federal supplemental compensation payable to an individual shall not be reduced by reason of any trade readjustment allowance to which the individual was entitled under the Trade Act of 1974 [Pub.L. 93-618, Jan. 3, 1975, 88 Stat. 1978].

(B) If an individual received any trade readjustment allowance under the Trade Act of 1974 [section 2101 et seq. of Title 19, customs Duties] in respect of any benefit year, the maximum amount of Federal supplemental compensation payable under this subtitle in respect of such benefit year shall be reduced (but not below zero) so that (to the extent possible by making such a reduction) the aggregate amount of-

(i) regular compensation,

(ii) extended compensation,

(iii) trade readjustment allowances, and

(iv) Federal supplemental compensation, payable in respect of such benefit year does not exceed the aggregate amount which would have been so payable had the individual not been entitled to any trade readjustment allowance.

(f)(1) No federal supplemental compensation shall be payable to any individual under an agreement entered into under this subtitle for any week beginning before whichever of the following is the later:

(A) the week following the week in which such agreement is entered into; or

(B) September 12, 1982.

(2)(A) Except as provided in subparagraph (B), no Federal supplemental compensation

shall be payable to any individual under an agreement entered into under this subtitle for any week beginning after March 31, 1985.

(B) In the case of any individual who is receiving Federal supplemental compensation for the week which includes March 31, 1985, such compensation shall continue to be payable to such individual in accordance with subsection (e) for any week thereafter, in a period of consecutive weeks for each of which he meets the eligibility requirements of this Act.

(g) The payment of Federal supplemental compensation shall not be denied to any recipient (who submits documentation prescribed by the Secretary) for any week because the recipient is in training or attending an accredited educational institution on a substantially full-time basis, or because of the application of State law to any such

recipient relating to the availability for work, the active search for work, or the refusal to accept work on account of such training or attendance, unless the State agency determines that such training or attendance will not improve the opportunities for employment of the recipient.

PAYMENTS TO STATES HAVING AGREEMENT FOR THE PAYMENT OF FEDERAL SUPPLEMENTAL COMPENSATION

Sec. 603. (a) There shall be paid to each State which has entered into an agreement under this subtitle an amount equal to 100 per centum of the Federal supplemental compensation paid to individuals by the State pursuant to such agreement.

(b) No payment shall be made to any State under this section in respect of compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other

than this subtitle or chapter 85 of title 5 of the United States Code [section 8501 et seq. of Title 5, Government Organization and Employees]. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this subtitle in respect of such compensation.

(c) Sums payable to any State by reason of such State's having an agreement under this subtitle shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this subtitle for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid

to the State. Such estimates may be made on the basis of such statistical sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

FINANCING PROVISIONS

Sec. 604. (a)(1) Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) [section 1105 of Title 42, the Public Health and Welfare] of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this subtitle.

(2) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this subtitle. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make

payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) [section 1105 of Title 42, the Public Health and Welfare] to the account of such State in the Unemployment Trust Fund.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, such sums as may be necessary to carry out the purposes of this subtitle. Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

(c) There are hereby authorized to be appropriated from the general fund of the Treasury, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) [section 501 et

seq. of Title 42] in meeting the costs of administration of agreements under this subtitle.

DEFINITIONS

Sec. 605. For purposes of this subtitle-

(1) the terms "compensation", "regular compensation", "base period", "benefit year", "State", "State agency", "State law", and "week" shall have the meanings assigned to them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [section 205 Pub.L. 91-373, set out as a note under this section]; and

(2) the term "period of eligibility" means, with respect to any individual, any week which begins on or after September 12, 1982, and begins before April 1, 1985 (except as otherwise provided in section 602(f)(2)(B)) except

that an individual shall not have a period of eligibility unless-

(A) his benefit year ends on or after June 1, 1982, or

(B) such individual was entitled to extended compensation for a week which begins on or after June 1, 1982.

FRAUD AND OVERPAYMENTS

Sec. 606. (a)(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal supplemental compensation under this subtitle to which he was also entitled, such individual-

(A) shall be ineligible for further Federal supplemental compensation under this subtitle in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18, United States Code [section 1001 of Title 18, Crimes and Criminal Procedure].

(2)(A) In the case of individuals who have received amounts of Federal supplemental compensation under this subtitle to which they were not entitled, the State is authorized to require such individuals to repay the amounts of such Federal supplemental compensation to the State agency, except that the State agency may waive such repayment if it determines that-

(i) the payment of such Federal supplemental compensation was without fault on the part of any such individual, and

(ii) such repayment would be contrary to equity and good conscience.

(B) The State agency may recover the amount to be repaid, or any part thereof, by deductions from any Federal supplemental compensation payable to such individual under this subtitle or from any unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment during the three-year period after the date such individuals received the payment of the Federal supplemental compensation to which they were not entitled, except that no single deduction may

exceed 50 per centum of the weekly benefit amount from which such deduction is made.

(C) No repayment shall be required and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(3) Any determination by a State agency under paragraph (1) or (2) shall be subject to review in the same manner and to the same extend as determinations under the State unemployment compensation law, and only in that manner and to that extent.

§ 3305. Applicability of State law

(a) **Interstate and foreign commerce.-** No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does

not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) **Federal instrumentalities in general.**- The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c)(6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on

account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision

for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(c) **National banks.**- Nothing contained in section 5240 of the Revised Statutes, as amended (12 U.S.C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official,

body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) **Federal property.**- No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

[(e) Repealed. Sept. 1, 1954, c. 1212, § 4(c), 68 Stat. 1135]

(f) **American vessels.-** The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed,directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to

make contributions, with respect to such service,to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, and is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) **Vessels operated by general agents of United States.-** The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the

obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed by officers and members of the crew on or in connection with American vessels-

(1) owned by or bareboat chartered to the United States, and

(2) whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the

same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) **Requirement by State of contributions.**- Any state may, as to service performed on account of which contributions are made pursuant to subsection (g)-

(1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) **General agent as legal entity.-** Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

(ii) **Denial of credits in certain cases.-** Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year if, on October 31 of such taxable year, the Secretary

of Labor certifies to the Secretary of the Treasury his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c).

§ 3306. Definitions

(a) **Employer.-** For purposes of this chapter-

(1) **In general.-** The term "employer" means, with respect to any calendar year, any person who-

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

(2) **Agricultural labor.-** In the case of agricultural labor, the term "employer" means, with respect to any calendar year, any person who-

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $20,000 or more for agricultural labor, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day.

(3) **Domestic service.-** In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term "employer" means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages

in cash of $1,000 or more for such service.

(4) **Special rule.-** A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service.

(b) **Wages.-** For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include-

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraph of this subsection) equal

to $7,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this

subsection) with respect to employment equal to $7,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their

dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of-

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workmen's compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death;

[(3) Repealed. Pub.L. 98-21, Title III, § 324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124.]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection

with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary-

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),

(D) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

(E) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3)),

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or

all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974; or

(G) under a cafeteria plan (within the meaning of section 125) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received,

(6) the payment by an employer (without deduction from the remuneration of the employee)-

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's grade or business;

[(8) Repealed. Pub.L. 98-21, Title III, § 324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is

allowable under section 217 (determined without regard to section 274(n));

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid-

(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(11) remuneration for agricultural labor paid in any medium other than cash;

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129;

(14) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee

will be able to exclude such items from income under section 119;

(15) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died; or

(16) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132.

Except as other provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages. Nothing in the regulations prescribed for purposes of chapter 24 (relat-

ing to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.

(c) **Employment.-** For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing; him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee

is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (i)(3)), except

(1) agricultural labor (as defined in subsection (k)) unless-

(A) such labor is performed for a person who-

(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals

employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)), or

(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being a different calendar week, employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals; and

(B) such labor is not agricultural labor performed before January 1, 1993, by an individual who is an alien admitted to the United States to perform agricultural

labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual

shall be deemed to be regularly employed by an employer during a calendar quarter only if-

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is-

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is

wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351);

(10)(A) service performed in any calendar quarter in the employ of any

organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than $50, or

(B) service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

(C) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee of a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government-

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign

country by employees of the United States Government and of instrumentalities thereof;

(13) services performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international organization;

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except-

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the

register tonnage of merchant vessels under the laws of the United States);

(18) service described in section 3121(b)(20));

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), or (M)), and which is performed to carry out the purpose specified in subparagraph (F), (J), or (M), as the case may be; or

(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp-

(A) if such camp-

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33-1/3 percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year.

(d) **Included and excluded service.-** For purposes of this chapter, if the services performed during one-half or more of any pay

period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c)(9).

(e) **State agency.-** For purposes of this chapter, the term "State agency" means any

State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) **Unemployment fund.-** For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in exis-

tence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that-

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(2) the amounts specified by section 903(c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices, and

(3) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act.

(g) **Contributions.-** For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) **Compensation.-** For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) **Employee.-** For purposes of this chapter, the term "employee" has the meaning assigned to such term by section 3121(d), except that paragraph (4) and subparagraphs (B) and (C) of paragraph (3) shall not apply.

(j) **State, United States, and American employer.-** For purposes of this chapter-

(1) **State.-** The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) **United States.-** The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) **American employer.-** The term "American employer" means a person who is

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(i) **Agricultural labor.-** For purposes of this chapter, the term "agricultural labor" has the meaning assigned to such term by subsection (g) of section 3121; except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

"(B) in the employ of a group of operators of farms (or a coopera-

tive organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;".

[(l) Repealed. Sept. 1, 1954, c. 1212, § 4(c), 68 Stat. 1135]

(m) **American vessel and aircraft.-** For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States

or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(n) **Vessels operated by general agents of United States.-** Notwithstanding the provisions of subsection (c)(6), service performed by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel-

(1) owned by or bareboat chartered to the United States and

(2) whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as

a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

(o) **Special rule in case of certain agricultural workers.-**

(1) **Crew leaders who are registered or provide specialized agricultural labor.-**For purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person

shall be treated as an employee of such crew leader-

(A) if-

(i) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or

(ii) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(B) if such individual is not an employee of such other person within the meaning of subsection (i).

(2) **Other crew leaders.-** For purposes of this chapter, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (1)-

(A) such other person and not the crew leader shall be treated as the employer of such individual; and

(B) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

(3) **Crew leader.-** For purposes of this subsection, the term "crew leader" means an individual who-

(A) furnishes individuals to perform agricultural labor for any other person,

(B) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and

(C) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(p) **Concurrent employment by two or more employers.-** For purposes of sections 3301, 3302, and 3306(b)(1), if two or more related corporations concurrently employ the same individual and compensate such individual

through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(q) **Full time student.-** For purposes of subsection (c)(20), an individual shall be treated as a full time student for any period-

(1) during which the individual is enrolled as a full time student at an educational institution, or

(2) which is between academic years or terms if-

(A) the individual was enrolled as a full time student at an educational institution for the immedi-

ately preceding academic year or term, and

(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).

(r) **Treatment of certain deferred compensation and salary reduction arrangements.-**

(1) **Certain employer contributions treated as wages.-** Nothing in any paragraph of subsection (b) (other than paragraph (1) shall exclude from the term "wages"-

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(a)(8), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(2) **Treatment of certain nonqualified deferred compensation plans.-**

(A) **In general.-** Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of-

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

(B) **Taxed only once.-** Any amount taken into account as wages by

reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) **Nonqualified deferred compensation plan.-** For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (b)(5).

(s) **Tips treated as wages.-** For purposes of this chapter, the term "wages" includes tips which are-

(1) received while performing services which constitute employment, and

(2) included in a written statement furnished to the employer pursuant to section 6053(a).

SUBCHAPTER III--GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

§ 501. Use of available funds

The amounts made available pursuant to section 1101(c)(1)(A) of this title for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided.

§ 502. Payments to States: computation of amounts

(a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made including 100 percent of so much of the reasonable expendi-

tures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title. The Secretary's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a) of this section, pay through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the General

Accounting Office, to the State agency charged with the administration of such law the amount so certified.

§ 503. State laws

(a) **Provisions required**

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for-

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and

(2) Payment of unemployment compensation solely through public employment

offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act), immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund established by section 1104 of this title; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation exclusive of expenses of administra-

tion, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act; *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 1103(c)-(2) of this title may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: *Provided further*, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise

payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: *Provided further*, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section; and

(6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports, and

(7) Making available upon request to any agency of the United States charged with the administration of public works

or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 502 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 502 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary

of Labor for the proper administration of such State law.

(b) **Failure to comply; payments stopped** Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is-

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied he shall make no further certifica-

tion to the Secretary of the Treasury with respect to such State: *Provided*, That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: *Provided further*, That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) **Denial of certification; availability of records to Railroad Retirement Board; cooperation with Federal agencies**

The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law-

(1) that such State does not make its records available to the Railroad Retirement Board, and furnish to the

Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes;

(2) that such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law; or

(3) that any interest required to be paid on advances under subchapter XII of this chapter has not been paid by the date on which such interest is required to be paid or has been paid directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund, until such interest is properly paid.

(d) **Disclosure of unemployment compensation information; deduction and withholding**

of amounts owed to State food stamp agencies; reimbursement of administrative costs; non-compliance of State agency

(1) The State agency charged with the administration of the State law-

(A) shall disclose, upon request and on a reimbursable basis, to officers and employees of the Department of Agriculture and to officers or employees of any State food stamp agency any of the following information contained in the records of such State agency-

(i) wage information

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

(iii) the current (or most recent) home address of such individual, and

(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977 [7 U.S.C.A. § 2011 et seq.].

(2)(A) For purposes of this paragraph, the term "unemployment compensation" means any

unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law-

(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977 [7 U.S.C.A. § 2022(c)(1)]) of food stamp coupons,

(ii) may notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected over-

issuance and the applicant is determined to be so eligible.

(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual-

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977 [7 U.S.C.A. § 2022(c)(3)(A)], or

(III) an amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act [7 U.S.C.A. § 2022(c)(3)-(B)], and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance.

(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term "State food stamp agency" means any agency described in section 3(n)(1) of the Food Stamp Act of 1977 [7 U.S.C.A. § 2012(n)-(1)] which administers the food stamp program established under such Act.

(e) **Disclosure of wage information; non-compliance of State agency**

(1) The State agency charged with the administration of the State law-

(A) shall disclose, upon request and on a reimbursable basis, directly to officers or employees of any State or local child support enforcement agency any wage information contained in the records of such State agency, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations.

For purposes of this subsection, the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 654 of this

title which has been approved by the Secretary of Health and Human Services under part D of subchapter IV of this chapter.

(2)(A) The State agency charged with the administration of the State law-

(i) shall require each new applicant for unemployment compensation to disclose whether or not such application owes child support obligations (as defined in the last sentence of paragraph (1)),

(ii) shall notify the State or local child support enforcement agency enforcing such obligations, if any applicant discloses under clause (i) that he owes child support obligations and he is determined to be eligible for unemployment compensation, that such applicant has been so determined to be eligible,

(iii) shall deduct and withhold from any unemployment compensation otherwise payable to an individual-

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State agency under section 654(19)(B)(i) of this title, or

(III) any amount otherwise required to be so deducted and withheld from such unemployment compensation through legal process (as defined in section 662(e) of this title), and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State or local child support enforcement agency.

Any amount deducted and withheld under clause (iii) shall for all purposes be treated as

if it were paid to the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of his child support obligations.

(B) For purposes of this paragraph, the term "unemployment compensation" means any compensation payable under the State law (including amounts payable pursuant to agreements under any Federal unemployment compensation law).

(C) Each state or local child support enforcement agency shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by such State agency under this paragraph which are attributable to child support obligations being enforced by the State or local child support enforcement agency.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing

to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1) or (2), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in the last sentence of paragraph (1).

(f) **Income and eligibility verification system**

The State agency charged with the administration of the State law shall provide that

information shall be required and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

(g) **Recovery of unemployment payments**

(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

(2) Any State may enter into an agreement with the Secretary of Labor under which-

(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered,

in accordance with the same procedures as apply under paragraph (1).

(3) For purposes of this subsection, "unemployment benefits" means unemployment compensation, trade adjustment allowances, and other unemployment assistance.

(h) **Access by Secretary of Health and Human Services to wage and unemployment compensation claims information; suspension by Secretary of Labor of payments to State for noncompliance**

(1) The State agency charged with the administration of the State law shall take such actions (in such manner as may be provided in the agreement between the Secretary of Health and Human Services and the Secretary of Labor under section 653(e)(3) of this title) as may be necessary to enable the Secretary of Health and Human Services to obtain prompt access to any wage and

unemployment compensation claims information (including any information that might be useful in locating an absent parent or such parent's employer) for use by the Secretary of Health and Human Services, for purposes of section 653 of this title, in carrying out the child support enforcement program under subchapter IV of this chapter.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until such Secretary is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, such Secretary shall make no further certification

to the Secretary of the Treasury with respect to such State.

(i) **Access to State employment records**

(1) The State agency charged with the administration of the State law-

(A) shall disclose, upon request and on a reimbursable basis, only to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency, any of the following information contained in the records of such State agency with respect to individuals applying for or participating in any housing assistance program administered by the Department who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development-

(i) wage information, and

(ii) whether an individual is receiving, has received, or has made application for, unemployment

compensation, and the amount of any such compensation being received (or to be received) by such individual, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to ensure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program of the Department of Housing and Urban Development.

(2) The Secretary of Labor shall prescribe regulations governing how often and in what form information may be disclosed under paragraph (1)(A).

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the adminis-

tration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he or she shall make no future certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term "public housing agency" means any agency described in section 1437a(b)(6) of this title.

(5) The provision of this subsection shall cease to be effective beginning on October 1, 1994.

§ 1101. Employment Security Administration Account

(a) Establishment

There is hereby established in the Unemployment Trust Fund an employment security administration account.

(b) Amount credited to Account; transfer of funds; adjustments; repayment of internal revenue refunds

(1) There is hereby appropriated to the Unemployment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act [26 U.S.C.A. § 3301 et seq.] and covered into the Treasury.

(2) The amount appropriated by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Unemployment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amount subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960), were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to all refunds made after June 30, 1960, of amounts received as

tax under the Federal Unemployment Tax Act [26 U.S.C.A. § 3301 et seq.] (including interest on such refunds).

(c) **Administrative expenditures; necessary expenses; quarterly transfer of funds; adjustments; limitation; estimate of net receipts**

(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1971, and for each fiscal year thereafter-

(A) such amounts (not in excess of the applicable limit provided by paragraph (3) and, with respect to clause (ii), not in excess of the limit provided by paragraph (4)) as the Congress may deem appropriate for the purpose of-

(i) assisting the States in the administration of their unemployment compensation laws as provided

in subchapter III of this chapter (including administration pursuant to agreements under any Federal unemployment compensation law),

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C. secs. 49-49n), and

(iii) carrying into effect section 2003 of Title 38;

(B) such amounts (not in excess of the limit provided by paragraph (4) with respect to clause (iii)) as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under-

(i) this subchapter and subchapters III and XII of this chapter,

(ii) the Federal Unemployment Tax Act [26 U.S.C.A. § 3301 et seq.],

(iii) the provisions of the Act of June 6, 1933, as amended [29 U.S.C.A. § 49 et seq.],

(iv) chapter 41 (except section 2003) of Title 38, and

(v) any Federal unemployment compensation law.

The term "necessary expenses" as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duly stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security

administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under-

(A) this subchapter and subchapters III and XII of this chapter, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act [26 U.S.C.A. § 3301 et seq.], and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjust-

ments shall be made by the Secretary of the Treasury in future payments.

(3)(A) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year after June 30, 1970, is except as provided in subparagraph (B) and in the second sentence of subsection (f)(3)(A) of this section, an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the amount by which the net receipts during such year under the Federal Unemployment Tax Act [26 U.S.C.A. § 3301 et seq.] will exceed the amount transferred under section 1105(b) of this title during such year to the extended unemployment compensation account.

(B) The limitation established by subparagraph (A) is increased by any unexpended amount retained in the employment security

administration account in accordance with subsection (f)(2)(B) of this section.

(C) Each estimate of net receipts under this paragraph shall be based upon a tax rate of 0.6 percent.

(4) For purposes of paragraph (1)(A)(ii) and (1)(B)(iii) the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices in accordance with the Act of June 6, 1933, as amended [29 U.S.C.A. § 49 et seq.], and of the necessary expenses of the Department of Labor for the performance of its functions under the provisions of such Act, as the President determines is an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President's determination,

after consultation with the Secretary, shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds relevant.

(d) **Additional tax attributable to reduced credits; transfer of funds**

(1) The Secretary of the Treasury is directed to transfer from the employment security administration account-

(A) To the Federal unemployment account, an amount equal to the amount by which-

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act [26 U.S.C.a. § 3301 et seq.] with respect to any State by reason of the reduced credits provisions of

section 3302(c)(3) of such Act [26 U.S.C.A. § 3302(c)(3)] and covered into the Treasury for the repayment of advances made to the State under Section 1321 of this title, exceeds

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional tax received and

covered into the Treasury exceeds that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) of this section.

(e) **Revolving fund; appropriations; advances to Account; repayment; interest**

(1) There is hereby established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are hereby authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the preceding fiscal year, no advance may be made under this subsection during such fiscal year.

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming

a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest) repayable under this subsection.

(f) Determination of excess in Account; limitation on amount to be retained; use of balance in Account during certain fiscal years; net balance

(1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2)(A) Except as provided in subparagraph (B), the excess in the employment security administration account as of the close of any fiscal year is the amount by which the net balance in such account as of such time (after the application of section 1102(b) of this title) and paragraph (3)(C) of this subsection exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher

than as of the beginning of any other such fiscal year.

(B) With respect to the fiscal years ending June 30, 1970, June 30, 171, and June 30, 1972, the balance in the employment security administration account at the close of each such fiscal year shall not be considered excess but shall be retained in the account for use as provided in paragraph (1) of subsection (c) of this section.

(3)(A) The excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account until the amount in such account is equal to 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the fiscal year for which the excess is determined. Three-eighths of the amount in

the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or $150 million, whichever is the lesser, is authorized to be made available for such fiscal year pursuant to subsection (c)(1) of this section for additional costs of administration due to an increase in the rate of the insured unemployment for a calendar quarter of at least 15 percent over the rate of the insured unemployment for the corresponding quarter in the immediately preceding year.

(B) If the entire amount of the excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, is not retained in the employment security administration account, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the balance of such excess or so much thereof as is

required to increase the amount in the extended unemployment compensation account to the limit provided in section 1105(b)(2) of this title.

(C) If as of the close of any fiscal year after June 30, 1972, the amount in the extended unemployment compensation account exceeds the limit provided in section 1105(b)-(2) of this title, such excess shall be transferred to the employment security administration account as of the close of such fiscal year.

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of-

(a) the amounts then subject to transfer pursuant to subsection (d) of this section, and

(B) the balance of advances (plus interest accrued thereon) then repayable to the revolving fund established by subsection (e) of this section.

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year.

(g) **Transfers for calendar years 1988, 1989 and 1990**

(1) With respect to calendar years, 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account-

(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1) of Title 26 which is attributable to the differences in the tax rates (B) to the extended unemployment compensation

account an amount equal to 50 percent of such amount of tax received.between paragraphs (1) and (2) of such section; and

(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) of this section with respect to wages paid during such calendar years.

§ 1102. Transfers between Federal Unemployment Account and Employment Security Administration Account

(a) **Determination of excess; amount transferred**

Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year and the entire

amount of such excess is not retained in the employment security administration account or transferred to the extended unemployment compensation account as provided in section 1101(f)(3) of this title, there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the balance of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

(1) $550 million, or

(2) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to five-eights of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during

the fiscal year for which the excess is determined.

(b) **Unemployment account excesses**

The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) of this section shall be transferred to the employment security administration account as of the close of such fiscal year.

(c) **Report to Congress**

Whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account will reach the limit provided for such account in section 1101(f)(3)(A) of this title, and the Federal unemployment account will reach the limit provided for such account in subsection (a) of this section, and the extended unemployment compensation account

will reach the limit provided for such account in section 1105(b)(2) of this title, he shall, after consultation with the Secretary of the Treasury, so report to the Congress with a recommendation for appropriate action by the Congress.

§ 1103. Amounts transferred to State accounts

(a) **Determination and certification by Secretary of Labor**

(1) If as of the close of any fiscal year after the fiscal year ending June 30, 1972, the amount in the extended unemployment compensation account has reached the limit provided in section 1105(b)(2) of this title and the amount in the Federal unemployment account has reached the limit provided in section 1102(a) of this title and all advances and interest pursuant to section 1105(d) of this title and section 1323 of this title have been repaid, and there remains in the employ-

ment security administration account any amount over the amount provided in section 1101(f)(3)(A) of this title, such excess amount, except as provided in subsection (b) of this section, shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.

(2) Each state's share of the funds to be transferred under this subsection as of any October 1-

(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before the date on the basis of reports furnished by the States to the Secretary of Labor before September 1, and

(B) shall bear the same ratio to the total amount to be so transferred as the amount of wages subject to contributions under such State's unemployment compensa-

tion law during the preceding calendar year which have been reported to the State before August 1 bears to the total of wages subject to contributions under all State unemployment compensation laws during such calendar year which have been reported to the States before August 1.

(b) **Transfer of funds where State is ineligible**

(1) If the Secretary of Labor finds that on October 1 of any fiscal year-

(A) a state is not eligible for certification under section 503 of this title, or

(B) the law of a State is not approvable under section 3304 of Title 26,

then the amount available for transfer to such State's account shall, in lieu of being so transferred, be transferred to the Federal unemployment account as of the beginning of such October 1. If, during the fiscal year

beginning on such October 1, the Secretary of Labor finds and certifies to the Secretary of the Treasury that such State is eligible for certification under section 503 of this title, that the law of such State is approvable under such section 3304, or both, the Secretary of the Treasury shall transfer such amount from the Federal unemployment account to the account of such State. If the Secretary of Labor does not so find and certify to the Secretary of the Treasury before the close of such fiscal year then the amount which was available for transfer to such State's account as of October 1 of such fiscal year shall (as of the close of such fiscal year) become unrestricted as to use as part of the Federal unemployment account.

(2) The amount which, but for this paragraph, would be transferred to the account of a State under subsection (a) of this section or paragraph (1) of this subsection

shall be reduced (but not below zero) by the balance of advances made to the State under section 1321 of this title. The sum by which such amount is reduced shall-

(A) be transferred to or retained in (as the case may be) the Federal unemployment account, and

(B) be credited against, and operate to reduce-

(i) first, any balance of advances made before September 13, 1960 to the State under section 1321 of this title, and

(ii) second, any balance of advances made on or after September 13, 1960 to the State under section 1321 of this title.

(c) **Use of funds**

(1) Except as provided in paragraph (2), amounts transferred to the account of a State pursuant to subsections (a) and (b) of this

section shall be used only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if-

(A) the purposes and amounts were specified in the law making the appropriation.

(B) the appropriation law did not authorize the obligation of such money after the close of the two-year period which began on the date of enactment of the appropriation law.

(C) the money is withdrawn and the expenses are incurred after such date of enactment, and

(D) the appropriation law limits the total amount which may be obligated during a twelve-month period (as prescribed in the law of the State), or during a transitional period of less than twelve months caused by a change in the twelve-month period (as prescribed in the law of the State), to an amount which does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b) of this section during such twelve-month period or transitional period of less than twelve months and the thirty-four preceding twelve-month periods (including the transitional period of less than twelve months if it is within such

thirty-four twelve-month periods) exceeds (ii) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State during such thirty-four twelve-month periods (and the transitional period of less than twelve months if it is within the thirty-four twelve-month periods).

For purposes of subparagraph (D), amounts used by a State during any twelve-month period or transitional period of less than twelve months shall be charged against equivalent amounts which were transferred and which have not previously been so charged; except that no amount obligated for administration during any such period may be charged against any amount transferred during a twelve-month period or transitional period of less than twelve months earlier than the thirty-fourth preceding twelve-month period (including the

transitional period of less than twelve moths if it is within such thirty-four twelve-month periods).

(3)(A) If-

(i) amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section were used in payment of unemployment benefits to individuals; and

(ii) the Governor of such State submits a request to the Secretary of Labor that such amounts be restored under this paragraph,

then the amounts described in clause (i) shall be restored to the status of funds transferred under subsections (a) and (b) of this section which have not been used by eliminating any charge against amounts so transferred for the use of such amounts in the payment of unemployment benefits.

(B) Subparagraph (A) shall apply only to the extent that the amounts described in clause (i) of such subparagraph do not exceed the amount then in the State's account.

(C) Subparagraph (A) shall not apply if the State has a balance of advances made to its account under subchapter XII of this title.

(D) If the Secretary of Labor determines that the requirements of this paragraph are met with respect to any request, the Secretary shall notify the Governor of the State that such requirements are met with respect to such request and the amount restored under this paragraph. Such restoration shall be as of the first day of the first month following the month in which the notification is made.

§ 1104. Unemployment Trust Fund

(a) **Establishment**

There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter

in this subchapter called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depositary designated by him for such purpose, or with any Federal Reserve Bank.

(b) **Investments**

It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations

guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of Title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eight of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average

rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

(c) **Sale or redemption of obligations**

Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) **Treatment of interest and proceeds**

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) **Separate book accounts**

The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the employment security administration account, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund and shall credit quarterly (on March 31, June 30, September 30, and December 31, of each year) to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date. For the purpose of this subsection, the average daily balance shall be computed-

(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the balance of advances made to the State under section 1321 of this title, and

(2) in the case of the Federal unemployment account-

(A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and

(B) by subtracting from the sum so obtained the balance of advances made under section 1323 of this title to the account.

(f) **Payment to State agencies and Railroad Retirement Board**

The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance

administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment.

(g) **Federal Unemployment Account; establishment; appropriations; unemployment administrative expenditures**

There is hereby established in the Unemployment Trust Fund a Federal unemployment account. There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act [26 U.S.C.A. § 3301 et seq.], over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected under the Federal Unemployment Tax Act after June 30,

1946, and prior to July 1, 1953, over the unemployment administrative expenditures made after June 30, 1946, and prior to July 1, 1953. As used in this subsection, the term "unemployment administrative expenditures" means expenditures for grants under subchapter III of this chapter, expenditures for the administration of that subchapter by the Secretary of Health and Human Services, or the Secretary of Labor, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act, by the Department of the Treasury, the Secretary of Health and Human Services, or the Secretary of Labor. For the purposes of this subsection, there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of $40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (50 Stat. 754) and the sum of $18,451,846

which was authorized to be appropriated by section 361(b) of Title 45.

§ 1105. Extended Unemployment Compensation Account

(a) **Establishment**

There is hereby established in the Unemployment Trust Fund an extended unemployment compensation account. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.

(b) **Transfers to account**

(1) Except as provided by paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal, in the case of any month before April 1972, to one-fifth,

and in the case of any month after March 1972, to one-tenth of the amount by which-

(A) transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

(B) payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.

(2) Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year beginning after June 30, 1972, there shall be transferred (as

of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the total amount of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to whichever of the following is the greater:

(A) $750,000,000, or

(B) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to three-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(3) The Secretary of the Treasury shall make no transfer pursuant to paragraph (1) as of the close of any month if he determines that

the amount in the extended unemployment compensation account is equal to (or in excess of) the limitation provided in paragraph (2).

(c) **Transfers to state accounts**

Amounts in the extended unemployment compensation account shall be available for transfer to the accounts of the States in the Unemployment Trust Fund as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970.

(d) **Advances to account; repayment**

There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, as repayable advances, such sums as may be necessary to carry out the purposes of the Federal-State Extended Unemployment Compensation Act of 1970. Amounts appropriated as repayable advances shall be repaid, by transfers from the extended unemployment compensation account to the general fund of

the Treasury, at such times as the amount in the extended unemployment compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Repayments under the preceding sentence shall be made whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months. Any amount transferred as a repayment under this subsection shall be credited against, and shall operate to reduce, any balance of advances repayable under this subsection.

Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such

advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eight of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.

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403. Maximum total amount of benefits

§ 403. Maximum total amount of benefits.

A. With respect to any benefit year beginning prior to September 30, 1979, any otherwise eligible individual shall be entitled, during such benefit year, to a maximum total amount of benefits as shall be determined in the manner set forth in this Act as amended and in effect on November 9, 1977.

B. With respect to any benefit year beginning on or after September 30, 1979, any otherwise eligible individual shall be entitled, during such benefit year, to a maximum total amount of benefits equal to 26 times his weekly benefit amount plus dependents allowances, or to the total wages for insured work paid to such individual during the individual's base period, whichever amount is smaller.

409. Extended benefits

§ 409. Extended benefits. A. For the purposes of this Section:

1. "Extended benefit period" means a period which begins with the third week after a week for which there is a State "on" indicator; and ends with either of the following weeks, whichever occurs later: (1) the third week after the first week for which there is a State "off" indicator, or (2) the thirteenth consecutive week of such period. No extended benefit period shall begin by reason of a State "on" indicator before the fourteenth week following the end of a prior extended benefit period.

2. There is a "State 'on' indicator" for a week if the Director determines, in accordance with the regulations of the United States Secretary of Labor or other appropriate Federal agency, that for the period consisting of such week and the immediately preceding

twelve weeks, the rate of insured unemployment (not seasonally adjusted) in this State (a) equaled or exceeded 4% and equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, or (b) equaled or exceeded 5%, for weeks beginning after September 25, 1982 (1) equaled or exceeded 5% and equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, or (2) equaled or exceeded 6 percent.

3. There is a "State 'off' indicator" for a week if the Director determines, in accordance with the regulations of the United States Secretary of Labor or other appropriate Federal agency, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) in this State (a)

was less than 5% and was less than 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar year, or (b) was less than 4%; and for weeks beginning after September 25, 1982, (1) was less than 6% and less than 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, or (2) was less than 5%.

4. "Rate of insured unemployment", for the purpose of paragraphs 2 and 3, means the percentage derived by dividing (a) the average weekly number of individuals filing claims for "regular benefits" in this State for weeks of unemployment with respect to the most recent 13 consecutive week period, as determined by the Director on the basis of his reports to the United States Secretary of Labor or other appropriate Federal agency, by (b) the average monthly employment covered

under this Act for the first four of the most recent six completed calendar quarters ending before the close of such 13-week period.

5. "Regular benefits" means benefits, other than extended benefits and additional benefits, payable to an individual (including dependents' allowances) under this Act or under any other State unemployment compensation law (including benefits payable to Federal civilian employees and ex-servicemen pursuant to 5 U.S.C. chapter 85).

6. "Extended benefits" means benefits (including benefits payable to Federal civilian employees and ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this Section for weeks which begin in his eligibility period.

7. "Additional benefits" means benefits totally financed by a State and payable to exhaustees (as defined in subsection C) by reason of conditions of high unemployment or

by reason of other specified factors. If an individual is eligible to receive extended benefits under the provisions of this Section and is eligible to receive additional benefits with respect to the same week under the law of another State, he may elect to claim either extended benefits or additional benefits with respect to the week.

8. "Eligibility period" means the period consisting of the weeks in an individual's benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

9. Notwithstanding any of the provisions of Sections 1404, 1405B, and 1501, no employer shall be liable for payments in lieu of contributions, and wages shall not become benefit wages, by reason of the payment of extended benefits which are wholly reimbursed to this State by the Federal Government. With

respect to extended benefits, paid prior to July 1, 1989, wages shall become benefit wages under Section 1501 only when an individual is first paid such benefits with respect to his eligibility period which are not wholly reimbursed to this State by the Federal Government. Extended benefits, paid on or after July 1, 1989, shall become benefit charges under Section 1501.1 only when any individual is paid such benefits with respect to his eligibility period which are not wholly reimbursed by the Federal Government.

B. An individual shall be eligible to receive extended benefits pursuant to this Section for any week which begins in his eligibility period if, with respect to such week (1) he has been paid wages for insured work during his base period equal to at least 1-1/2 times the wages paid in the calendar quarter of his base period in which such wages were highest, provided that this provision

applies only with respect to weeks beginning after September 25, 1982; (2) he has met the requirements of Section 500E of this Act; (3) he is an exhaustee; and (4) except when the result would be inconsistent with the provisions of this Section, he has satisfied the requirements of this Act for the receipt of regular benefits.

C. An individual is an exhaustee with respect to a week which begins in this eligibility period if:

1. Prior to such week (a) he has received, with respect to his current benefit year that includes such week, the maximum total amount of benefits to which he was entitled under the provisions of Section 403B, and all of the regular benefits (including dependents' allowances) to which he had entitlement (if any) on the basis of wages or employment under any other State unemployment compensation law; or (b) he has received all the regular

benefits available to him with respect to his current benefit year that includes such week, under this Act and under any other State unemployment compensation law, after a cancellation of some or all of his wage credits or the partial or total reduction of his regular benefits rights; or (c) his benefit year terminated, and he cannot meet the qualifying wage requirements of Section 500E of this Act or the qualifying wage or employment requirements of any other State unemployment compensation law to establish a new benefit year which would include such week or, having established a new benefit year that includes such week, he is eligible for regular benefits by reason of Section 607 of this Act or a like provision of any other State unemployment compensation law; and

2. For such week (a) he has no right to benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act,

or such other Federal laws as are specified in regulations of the United States Secretary of Labor or other appropriate Federal agency; and (b) he has not received and is not seeking benefits under the unemployment compensation law of Canada, except that if he is seeking benefits under such law, this clause shall not apply.

3. For the purposes of clauses (a) and (b) of paragraph 1 of this subsection, an individual shall be deemed to have received, with respect to his current benefit year, the maximum total amount of benefits to which he was entitled or all of the regular benefits to which he had entitlement, or all of the regular benefits available to him, as the case may be, even though (a) as a result of a pending reconsideration or appeal with respect to the "finding" defined in Section 701, or of a pending appeal with respect to wages or employment or both under any other State

unemployment compensation law, he may subsequently be determined to be entitled to more regular benefits; or (b) by reason of a seasonality provision in a State unemployment compensation law which establishes the weeks of the year for which regular benefits may be paid to individuals on the basis of wages in seasonal employment he may be entitled to regular benefits for future weeks but such benefits are not payable with respect to the week for which he is claiming extended benefits, provided that he is otherwise an exhaustee under the provisions of this subsection with respect to his rights to regular benefits, under such seasonality provision, during the portion of the year in which that week occurs; or (c) having established a benefit year, no regular benefits are payable to him with respect to such year because his wage credits were canceled or his rights to regular benefits were totally

reduced by reason of the application of a disqualification provision of a State unemployment compensation law.

D. 1. The provisions of Section 607 and the waiting period requirements of Section 500D shall not be applicable to any week with respect to which benefits are otherwise payable under this Section.

2. An individual shall not cease to be an exhaustee with respect to any week solely because he meets the qualifying wage requirements of Section 500E for a part of such week.

3. For the purposes of this Section, the "base period" referred to in Sections 601 and 602 shall be the base period with respect to the benefit year in which the individual's eligibility period begins.

E. With respect to any week which begins in his eligibility period, an exhaustee's "weekly extended benefit amount" shall be the same as his weekly benefit amount during his

benefit year which includes such week or, if such week is not in a benefit year, during his applicable benefit year, as defined in regulations issue by the United States Secretary of Labor or other appropriate Federal agency. If the exhaustee had more than one weekly benefit amount during his benefit year, his weekly extended benefit amount with respect to such week shall be the latest of such weekly benefit amounts.

F. An eligible exhaustee shall be entitled, during any eligibility period, to a maximum total amount of extended benefits equal to the lesser of the following amounts:

1. Fifty percent of the maximum total amount of benefits to which he was entitled under Section 403B during his applicable benefit year; or

2. Thirteen times his weekly extended benefit amount as determined under subsection E.

3. Notwithstanding subparagraphs 1 and 2 of this subsection F, and if the benefit year of an individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this subsection F, be otherwise entitled to receive in that extended benefit period, for weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances as defined in the federal Trade Act of 1974 within that benefit year multiplied by his weekly benefit amount for extended benefits.

G. 1. A claims adjudicator shall examine the first claim filed by an individual with respect to his eligibility period and, on the basis of the information in his possession, shall make an "extended benefits finding".

Such finding shall state whether or not the individual has met the requirement of subsection B(1), is an exhaustee and, if he is, his weekly extended benefit amount and the maximum total amount of extended benefits to which he is entitled. The claims adjudicator shall promptly notify the individual of his "extended benefits finding", and shall promptly notify the individual's most recent employing unit, with respect to benefit years beginning on or after July 1, 1989 and the individual's last employer (referred to in Section 1502.1) that the individual has filed a claim for extended benefits. The claims adjudicator may reconsider his "extended benefits finding" at any time within one year after the close of the individual's eligibility period, and shall promptly notify the individual of such reconsideration finding. All of the provisions of this Act applicable to reviews from findings or reconsidered findings made

pursuant to Sections 701 and 703 which are not inconsistent with the provisions of this subsection shall be applicable to reviews from extended benefits findings and reconsidered extended benefits findings.

2. If, pursuant to the reconsideration or appeal with respect to a "finding", referred to in paragraph 3 of subsection C, an exhaustee is found to be entitled to more regular benefits and, by reason thereof, is entitled to more extended benefits, the claims adjudicator shall make a reconsidered extended benefits finding and shall promptly notify the exhaustee thereof.

H. Whenever an extended benefit period is to begin in this State because there is a State "on" indicator, or whenever an extended benefit period is to end in this State because there is a State "off" indicator, the Director shall make an appropriate public announcement.

I. Computations required by the provisions of paragraph 6 of subsection A shall be made by the Director in accordance with regulations prescribed by the United States Secretary of Labor, or other appropriate Federal agency.

J. 1. Interstate Benefit Plan means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

2. An individual who commutes from his state of residence to work in another state and continues to reside in such state of residence while filing his claim for unemployment insurance under this Section of the Act shall not be considered filing a claim under the Interstate Benefit Payment Plan so long as he files his claim in and continues to report to the employment office under the regulations

applicable to intrastate claimants in the state in which he was so employed.

3. "State" when used in this subsection includes States of the United States of America, the District of Columbia, Puerto Rico and the Virgin Islands. For purposes of this subsection, the term "state" shall also be construed to include Canada.

4. Notwithstanding any other provision of this Act, effective with weeks beginning on or after June 1, 1981 an individual shall be eligible for a maximum of 2 weeks of benefits payable under this Section after he files his initial claim for extended benefits in an extended benefit period, as defined in paragraph 1 of subsection A, under the Interstate Benefit Payment Plan unless there also exists an extended benefit period, as defined in paragraph 1 of subsection A, in the state where such claim is filed. Such maximum eligibility shall continue as long

as the individual continues to file his claim under the Interstate Benefit Payment Plan, notwithstanding that the individual moves to another state where an extended benefit period exists and files for weeks prior to his initial Interstate claim in that state.

5. To assure full tax credit to the employers of this state against the tax imposed by the Federal Unemployment Tax Act, the Director shall take any action or issue any regulations necessary in the administration of this subsection to insure that its provisions are so interpreted and applied as to meet the requirements of such Federal Act as interpreted by the United States Secretary of Labor or other appropriate Federal agency.

K. 1. Notwithstanding any other provisions of this Act, an individual shall be ineligible for the payment of extended benefits for any week of unemployment in his eligibility period if the Director finds that during such period:

a. he failed to accept any offer of suitable work (as defined in paragraph 3 below) or failed to apply for any suitable work to which he was referred by the Director; or

b. he failed to actively engage in seeking work as prescribed under paragraph 5 below.

2. Any individual who has been found ineligible for extended benefits by reason of the provisions of paragraph 1 of this subsection shall be denied benefits beginning with the first day of the week in which such failure has occurred and until he has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned remuneration equal to at least 4 times his weekly benefit amount.

3. For purposes of this subsection only, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly

remuneration payable for the work must exceed the sum of:

a. the individual's extended weekly benefit amount as determined under subsection E above plus

b. the amount, if any, of supplemental unemployment benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,

c. pays wages not less than the higher of-

(i) the minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) the applicable state or local minimum wage;

d. provided, however, that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

(i) the position was not offered to such individual in writing or was not listed with the employment service;

(ii) such failure could not result in a denial of benefits under the definition of suitable work for regular benefits claimants in Section 603 to the extent that the criteria of suitability in that Section are not inconsistent with the provisions of this paragraph 3;

(iii) the individual furnishes satisfactory evidence to the Director that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefits in Section 603 without regard to the definition specified by this paragraph.

4. Notwithstanding the provisions of paragraph 3 to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under Section 603 of this Act.

5. For the purpose of subparagraph b of paragraph 1, an individual shall be treated as actively engaged in seeking working during any week if-

a. The individual has engaged in a systematic and sustained effort to obtain work during such week, and

b. the individual furnishes tangible evidence that he has engaged in such effort during such week.

6. The employment service shall refer any individual entitled to extended benefits under

this Act to any suitable work which meets the criteria prescribed in paragraph 3.

7. Notwithstanding any other provision of this Act, an individual shall not be eligible to receive extended benefits, otherwise payable under this Section, with respect to any week of unemployment in his eligibility period if such individual has been held ineligible for benefits under the provisions of Section 601, 602 or 603 of this Act until such individual had requalified for such benefits by returning to employment and satisfying the monetary requalification provision by earning at least his weekly benefit amount.

8. This subsection shall be effective for weeks beginning on or after March 31, 1981.

660. Handling of funds -- Bond -- Accounts

§ 2100. Handling of funds -- Bond -- Accounts. A. All contributions and payments in lieu of contributions collected under this

Act together with any interest thereon; all penalties collected pursuant to this Act; any property or securities acquired through the use thereof; all moneys advanced to this State's account in the unemployment trust fund pursuant to the provisions of Title XII of the Social Security Act, as amended; all moneys received from the federal tax avoidance surcharge established by Section 1506.4; all moneys received from the Federal government as reimbursements pursuant to Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, as amended; all moneys credited to this State's account in the unemployment trust fund pursuant to Section 903 of the Federal Social Security Act, as amended; and all earnings of such property or securities and any interest earned upon any such moneys shall be paid or turned over to and held by the Director, as ex-officio custodian of the clearing account,

the unemployment trust fund account and the benefit account, and by the State Treasurer as ex-officio custodian of the special administrative account, separate and apart from all public moneys or funds of this State, as hereinafter provided. Such moneys shall be administered by the Director exclusively for the purpose of this Act.

No such moneys shall be paid or expended except upon the direction of the Director in accordance with such regulations as he shall prescribe pursuant to the provisions of this Act.

The State Treasurer shall be liable on his general official bond for the faithful performance of his duties in connection with the moneys in the special administrative account provided for under this Act. Such liability on his official bond shall exist in addition to the liability upon any separate bond given by him. All sums recovered for

losses sustained by the account shall be deposited in that account.

The Director shall be liable on his general official bond for the faithful performance of his duties in connection with the moneys in the clearing account, the benefit account and unemployment trust fund account provided for under this Act. Such liability on his official bond shall exist in addition to the liability upon any separate bond given by him. All sums recovered for losses sustained by any one of the accounts shall be deposited in the account that sustained such loss.

The Treasurer shall maintain for such moneys a special administrative account. The Director shall maintain for such moneys 3 separate accounts: a clearing account, a benefit account and an unemployment trust fund account. All moneys payable under this Act (except moneys requisitioned from this State's account in the unemployment trust fund and

deposited in the benefit account), upon receipt thereof by the Director, shall be immediately deposited in the clearing account; provided, however, that except as is otherwise provided in this Section, interest and penalties shall not be deemed a part of the clearing account but shall be transferred immediately upon clearance thereof to the special administrative account.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited by the Director with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to the Federal Social Security Act, as amended.

The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. The moneys in the benefit account shall be expended in

accordance with regulations prescribed by the Director and solely for the payment of benefits, refunds of contributions, interest and penalties under the provisions of the Act, the payment of health insurance in accordance with Section 410 of this Act, and the transfer or payment of funds to any Federal or State agency pursuant to reciprocal arrangements entered into by the director under the provisions of Section 2700E, except that moneys credited to this State's account in the unemployment trust fund pursuant to Section 903 of the Federal Social Security Act, as amended, shall be used exclusively as provided in subsection B. The Director shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the State's account therein, as he deems necessary solely for the payment of such benefits, refunds, and funds, for a reasonable future period.

The Director, as ex-officio custodian of the benefit account, which shall be kept separate and apart from all other public moneys, shall issue his checks for the payment of such benefits, refunds, health insurance and funds solely from the moneys so received into the benefit account. However, after January 1, 1987, no check shall be drawn on such benefit account unless at the time of drawing there is sufficient money in the account to pay the check. The Director shall retain in the clearing account an amount of interest and penalties equal to the amount of interest and penalties to be refunded from the benefit account. After clearance thereof, the amount so retained shall be immediately deposited by the Director, as are all other moneys in the clearing account, with the Secretary of the Treasury of the United States. If, at any time, an insufficient amount of interest and penalties is available for retention in

the clearing account, no refund of interest or penalties shall be made from the benefit account until a sufficient amount is available for retention as is so retained, or until the State Treasurer, upon the direction of the Director, transfers to the Director a sufficient amount from the special administrative account, for immediate deposit in the benefit account.

Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates of and may be utilized for authorized expenditures during succeeding periods, or, in the discretion of the Director, shall be redeposited with the Secretary of the Treasury of the United States to the credit of the State's account in the unemployment trust fund.

Moneys in the clearing, benefit and special administrative accounts shall not be commingled with other State funds but they shall be deposited as required by law and maintained in separate accounts on the books of a savings and loan association or bank.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended.

B. Moneys credited to the account of this State in the unemployment trust fund by the Secretary of the Treasury of the United States pursuant to Section 903 of the Social Security Act may not be requisitioned from this State's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this Act.

Any interest required to be paid on advances under Title XII of the Social Security Act shall be paid in a timely manner and shall not be paid directly or indirectly, by an equivalent reduction in contributions or payments in lieu of contributions from amounts in this State's account in the unemployment trust fund. Such moneys may be requisitioned pursuant to subsection A for the payment of benefits. Such moneys may also be requisitioned and used for the payment of expenses incurred for the administration of this Act, but only pursuant to a specific appropriation by the General Assembly and only if the expenses incurred and the moneys are requisitioned after the enactment of an appropriation law which:

1. Specifies the purpose or purposes for which such moneys are appropriated and the amount or amounts appropriated therefor;

2. Limits the period within which such moneys may be obligated to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

3. Limits the amount which may be obligated during any fiscal year to an amount which does not exceed the amount by which (a) the aggregate of the amounts credited to the account of this State pursuant to Section 903 of the Social Security Act during the same fiscal year and the 34 preceding fiscal years, exceeds (b) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this State during such 35 fiscal years.

Amounts credited to this State's account in the unemployment trust fund pursuant to Section 903 of the Social Security Act which are obligated for administration or paid out for benefits shall be charged against equiva-

lent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a fiscal year may be charged against any amount credited during a fiscal year earlier than the thirty-fourth preceding fiscal year.

Moneys appropriated as provided herein for the payment of expenses of administration shall be requisitioned by the Director as needed for the payment of obligations incurred under such appropriation. Upon receipt, such money shall be deposited with the State Treasurer, who shall hold such moneys, as ex-officio custodian thereof, in accordance with the requirements of Section 2103 and, upon the direction of the Director, shall make payments therefrom pursuant to such appropriation. Moneys so deposited shall until expended, remain a part of the unemployment trust fund and, if any will not be expended,

shall be returned promptly to the account of this State in the unemployment trust fund.

C. The Governor is authorized to apply to the United States Secretary of labor for an advance or advances to this State's account in the unemployment trust fund pursuant to the conditions set forth in Title XII of the Federal Social Security Act, as amended. The amount of any such advance may be repaid from this State's account in the unemployment trust fund provided that if the federal penalty tax avoidance surcharge established by Section 1506.4 is in effect for that year, any outstanding advance shall first be repaid from amounts in this State's account in the unemployment trust fund which were received from such surcharge by November 9 of each year.

661. Special administrative account

§ 2101. Special administrative account. Except as provided in Section 2100, all

interest and penalties collected pursuant to this Act shall be deposited in the special administrative account. The amount in this account in excess of $100,000 on the close of business of the last day of each calendar quarter shall be immediately transferred to this State's account in the unemployment trust fund. However, such funds shall not be transferred where it is determined by the Director that it is necessary to accumulate funds in the account in order to have sufficient funds to pay interest that may become due under the terms of Section 1202(b) of the Federal Social Security Act, as amended, upon advances made to the Illinois Unemployment Insurance Trust Fund under Title XII of the Federal Social Security Act or where it is determined by the Director that it is necessary to accumulate funds in the special administrative account in order to have sufficient funds to expend for any other

purpose authorized by this Section. The moneys available in the special administrative account shall be expended upon the direction of the Director whenever it appears to him that such expenditure is necessary for:

A. 1. The proper administration of this Act and no Federal funds are available for the specific purpose for which such expenditure is to be made, provided the moneys are not substituted for appropriations from Federal funds, which in the absence of such moneys would be available and provided the monies are appropriated by the General Assembly.

2. The proper administration of this Act for which purpose appropriations from Federal funds have been requested but not yet received, provided the special administrative account will be reimbursed upon receipt of the requested Federal appropriation.

B. To the extent possible, the repayment to the fund established for financing the cost of administration of this Act of moneys found by the Secretary of Labor of the United States of America, or other appropriate Federal agency, to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor, or other appropriate Federal agency, for the administration of this Act.

C. The payment of refunds or adjustments of interest or penalties, paid pursuant to Sections 901 or 2201.

D. The payment of interest on refunds of erroneously paid contributions, penalties and interest pursuant to Section 2201.1.

E. The payment or transfer of interest or penalties to any Federal or State agency, pursuant to reciprocal arrangements entered into by the Director under the provisions of Section 2700E.

F. The payment of any costs incurred, pursuant to Section 1700.1.

G. Beginning January 1, 1989, for the payment for the legal services authorized by subsection B of Section 802, up to $1,000,000 per year for the representation of the individual claimants and up to $1,000,000 per year for the representation of "small employers".

H. The payment of any fees collecting past due contributions, payments in lieu of contributions, penalties, and interest shall be paid (without an appropriation) form interest and penalty monies received from collection agents that have contracted with the Department under Section 2206 to collect such amounts, provided however, that the amount of such payment shall not exceed the amount of past due interest and penalty collected.

I. The payment of interest that may become due under the terms of Section 1202(b) of the Federal Social Security Act, as amended, for advances made to the Illinois Unemployment Insurance Trust Fund.

The Director shall annually on or before the first day of March report in writing to the Employment Security Advisory Board concerning the expenditures made from the special administrative account and the purposes for which funds are being accumulated.

If Federal legislation is enacted which will permit the use by the Director of some part of the contributions collected or to be collected under this Act, for the financing of expenditures incurred in the proper administration of this Act, then, upon the availability of such contributions for such purpose, the provisions of this Section shall be inoperative and interest and penalties

collected pursuant to his Act shall be deposited in and be deemed a part of the clearing account. In the event of the enactment of the foregoing Federal legislation, and within 90 days after the date upon which contributions become available for expenditure for costs of administration, the total amount in the special administrative account shall be transferred to the clearing account, and after clearance thereof shall be deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to the Federal Social Security Act, as amended.

663. Unemployment compensation administration cost

§ 2103. Unemployment compensation administration cost. All moneys received by the State or by the Director from any source for

the financing of the cost of the administration of this Act, including all Federal moneys allotted or apportioned to the State or to the Director for that purpose, including moneys received directly or indirectly from the federal government under the Job Training Partnership Act, and including moneys received from the Railroad Retirement Board as compensation for services or facilities supplied to said Board, or any moneys made available by this State or its political subdivisions and matched by moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, shall be received and held by the State Treasurer as ex-officio custodian thereof separate and apart from all other State moneys, and such funds shall be distributed or expended upon the direction of the Director and, except money received pursuant to the last paragraph of Section 2100B, shall be distributed or expended solely for the

purposes and in the amounts found necessary by the Secretary of Labor of the United States of America, or other appropriate Federal agency, for the proper and efficient administration of this Act. Notwithstanding any provision of this Section, all money requisitioned and deposited with the State Treasurer pursuant to the last paragraph of Section 2100B shall remain part of the unemployment trust fund and shall be used only in accordance with the conditions specified in the last paragraph of Section 2100B.

If any moneys received from the Secretary of Labor, or other appropriate Federal agency, under Title III of the Social Security Act, or any moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this State or its political subdivisions of the Wagner-Peyser Act, are found by the Secretary of Labor, or other appropriate Federal agency,

because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary, by the Secretary of Labor, or other appropriate Federal agency, for the proper administration of this Act, it is the policy of this State that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this State for expenditure as provided in the first paragraph of this Section. The Director shall report to the Bureau of the Budget, in the same manner as is provided generally for the submission by State Departments of financial requirements for the ensuing fiscal year, and the Governor shall include in his budget report to the next regular session of the General Assembly, the amount required for such replacement.

Moneys in this fund shall not be commingled with other State funds, but they shall be

depcsited as required by law and maintained in a separate account on the books of a savings and loan association or bank.

The State Treasurer shall be liable on his general official bond for the faithful performance of his duties as custodian of such moneys as may come into his hands by virtue of this Section. Such liability on his official bond shall exist in addition to the liability upon any separate bond given by him. All sums recovered for losses sustained by the fund herein described shall be deposited therein.

Upon the effective date of this amendatory Act of 1987, the Comptroller shall transfer all unobligated funds from the Job Training Fund into the Title III Social Security and Employment Fund.

790. Moneys and increments to be sole source of benefits -- Non-priority of rights

§ 2900. Money and increments to be sole source of benefits -- Non-priority of rights. The moneys payable under this Act, together with increments thereon, shall be the sole and exclusive source for the payment of benefits payable hereunder, and such benefits shall be deemed to be due and payable only to the extent that such moneys payable under this Act with increments thereon, are available.

Nothing in this Act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him either on his own behalf or on behalf of such individuals.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IRVING COSBY, et al., Plaintiffs, vs. SALLY WARD, Director of the Illinois Department of Employment Security, et al., Defendants.	)	No. 83 C 3116 Judge Frank H. Easterbrook District Judge pursuant to General Rule 2.30E

PARTIAL SETTLEMENT ORDER

Plaintiffs brought this class action for declaratory and injunctive relief pursuant to 42 U.S.C. §1983, challenging certain policies and practices of the Illinois Department of Employment Security ("IDES") regarding two unemployment insurance programs: 1) the extended benefits ("EB") program; *see*, the Federal State Extended Unemployment Compensation Act of 1970, 26 U.S.C. §3304(a)-(11) note Pub. L. 91-373 (as amended) and Ill.

Rev. Stat. ch. 48, §409; and 2) the Federal Supplemental Compensation Program; *see* The Federal Supplemental Compensation Act of 1982, 26 U.S.C. §3304, note Pub. L. 97-248 (as amended).

Plaintiffs, IDES and the United States Department of Labor ("USDOL") have entered into a stipulation for entry of a proposed partial settlement order dated June 13, 1990, the original of which has been filed with this Court.

The Court has assessed the fairness and reasonableness of the proposed partial settlement order and has considered the possible benefits of litigation to the plaintiffs and members of the plaintiff class, as compared with the benefits offered by the partial settlement order. Having done so, the Court is of the opinion that, insofar as the partial settlement order resolves the competing interests of the parties to the

litigation, the partial settlement order represents a fair resolution of those competing interests. The court therefore has concluded that the partial settlement order is fair, reasonable and adequate, and should be and is approved pursuant to Fed. R. Civ. P. 23(e). Now, therefore, upon the stipulation for entry of a partial settlement order between the plaintiffs, IDES and USDOL, upon all prior proceedings and herein, and upon the consent of the parties hereto the Court, being fully advised in the premises, hereby APPROVES, ADJUDGES AND DECREES as follows:

I. **CLASS CERTIFICATION**

The Court has previously certified two classes pursuant to orders entered on June 24, 1983 and June 14, 1984. The classes consist of:

(1) All persons who have made, are making or will make claims to the Illinois Department of Employment

Security for Federal Supplemental Compensation pursuant to Pub. L. 97-248 (as amended) and who have been, are being, or will be denied FSC by IDES on the ground that they have been unavailable for and/or failed actively to seek work.

(2) All persons who have made, are making or will make claims to the Illinois Department of Employment Security for Extended Benefits pursuant to the Federal-State Unemployment Compensation Act of 1970, 26 U.S.C. §§3304(a)(11) and note, Pub. L. 91-373 (as amended), and who have been, are being or will be denied EB by IDES on the ground that they have been unavail-

able for and/or failed actively to seek work.[1]

II. DEFINITION OF TERMS

As used herein, the following terms have the meanings indicated:

---

[1] IDES was formerly the Bureau of Employment Security within the Illinois Department of Labor ("IDOL"). See Illinois Executive Order No. 2 (1984); P.A. 83-1503. All functions and responsibilities of IDOL pertaining to unemployment insurance matters were transferred to IDES. The two classes were originally certified as to persons who had made claims to IDOL. The classes are amended here to reflect the transfer of authority for unemployment insurance from IDOL to IDES. It is understood, however, that IDES shall be responsible for providing all relief set forth in this Partial Settlement Order for EB and FSC claimants who filed their claims with either IDOL or IDES.

1. "Plaintiffs" or "claimants" means the named plaintiffs and all members of the plaintiff classes as described in Section I of this order;

2. "EB" means extended unemployment insurance benefits as paid pursuant to the Federal State Extended Unemployment Compensation Act of 1970, 26 U.S.C. §3304(a)(11) note Pub. L. 91-373 (as amended) and Ill. Rev.Stat. ch. 48, §409.

3. "EB program" means the program for payment of benefits for weeks beyond the weeks of regular unemployment benefits, which additional weeks are paid pursuant to the Federal State Extended Unemployment Compensation Act of 1970, 26 U.S.C. §3304(a)(11) note Pub. L. 91-373 (as amended) and Ill. Rev. Stat. ch. 48, §409.

4. "IDES" means the Illinois Department of Employment Security and its predecessor,

the Bureau of Employment Security of the Illinois Department of Labor.

5. "FSC benefits" means federal supplemental compensation benefits paid pursuant to the Federal Supplemental Compensation Act of 1982, 26 U.S.C. §3304 note Pub. L. 97-248 (as amended).

6. "FSC Act" means the Federal Supplemental Compensation Act of 1982, 26 U.S.C. §3304 note Pub. L. 97-248 (as amended).

7. "Regular unemployment benefits" means the unemployment insurance paid pursuant to 42 U.S.C. §§501 *et seq.*, and Ill. Rev. Stat. ch. 48, §§300 *et seq.* (except *id.* at §409), without regard to whether the nation is experiencing a recession. Claimants in Illinois who are eligible for regular benefits are entitled to a maximum total amount of benefits equal to 26 times their weekly benefit amount, plus dependent allowances, or to the total wages for insured work paid

during the claimant's base period, whichever is smaller. Ill. Rev. Stat. ch. 48, §403 B.

8. "USDOL" means the United States Department of Labor.

9. "Work search requirement" means any test that IDES may use to adjudicate whether a claimant restricts his search for work and conducts a systematic and sustained search for work throughout each week of unemployment claimed.

III. PROSPECTIVE RELIEF

A. Notice of Claimants' Work Search Responsibilities

1. In the operation of the EB program, IDES shall provide written notice to claimants that includes a list of the particular work search requirements used to adjudicate a claimant's entitlement to EB. IDES shall provide such notice on a document entitled "Claimant's Work Search Responsibilities and Other Requirements for Extended Benefits"

(hereafter "Work Search Notice"). The form which IDES will use is attached as Exhibit A.

2. No claimant shall be held to have violated any work search requirement unless (s)he has been given written notice of any such requirement on a Work Search Notice in a sufficiently particularized way such that a reasonable person would understand the requirement, and prior to the week in which the claimant conducted the work search that is held to have violated a work search requirement.

By way of examples, if, to qualify for EB, a claimant must look for jobs that include ones that: 1) pay wages as low as a particular amount (e.g. minimum wage, $4.00 per hour), that amount shall be stated; 2) are a distance from the claimant's home that requires a particular travel time (e.g. 1 1/2 hours), that time period shall be stated; 3)

include particular shifts (e.g. any shift available), those shifts shall be expressly stated. Also, if a claimant is to look for a minimum number of jobs or to look for work in person, that shall be stated. (These examples are not intended to be inclusive. To the contrary, a claimant is to be notified of any particular work search requirement that (s)he is to meet.)

3. To meet the requirements of Section III.A.1 and 2 hereof, IDES may either give each claimant a Work Search Notice in which the responsibilities are developed specially for him, or it may give all claimants, or any groups of claimants, a Work Search Notice in which the responsibilities, although particular, are given to all members of the group without being developed specifically for any one claimant. The Work Search Notice attached as Exhibit A meets the requirements of Section III.A.1 and 2.

B. Notice of Issues at Adjudications or Hearings

1. When a claimant is notified of a claims adjudicator's interview or a referee's hearing to adjudicate a question as to whether the claimant has met a work search requirement(s), IDES shall give him notice of the issue(s) to be raised at the interview or hearing, prior to the interview or hearing. A list of the possible issues that can be raised at a claims adjudicator's interview is attached as Exhibit B. A list of the possible issues that can be raised at a referee's hearing is attached as Exhibit C.

2. A notice of the issues to be raised at claims adjudicators' interviews or referees' hearings shall state with reasonable particularity how the work search is alleged to be inadequate by reference to one or more of the requirements listed on the Work Search Notice.

C. Changes In Notice Forms

It is expressly understood and agreed that the forms attached hereto as Exhibits A through C may be altered by IDES for clarity or to meet changed program requirements. IDES need not obtain prior approval of either the court or the plaintiffs to make such alterations. However, IDES must provide particularized notice of work search responsibilities and of the issues to be raised at claims adjudicators' interviews and referees' hearings including any new or modified requirements.

IV. RETROACTIVE RELIEF

A. Agreement to Promptly Litigate the Question of Relief For Most Claimants

1. Except as set forth in subparagraph B hereof, neither IDES nor USDOL agrees to provide retroactive relief. For instance, neither IDES nor USDOL will agree to pay all,

or any part of any EB or FSC benefits to the named plaintiffs, or to members of the plaintiff class. In addition, neither IDES nor USDOL will agree to re-adjudicate such persons' claims to EB or FSC so as to pay those claimants that are thereby determined to have been eligible for such benefits. And neither IDES nor USDOL will agree to give notice to claimants that IDES violated their rights. (These examples are not meant to exhaust all the forms of retroactive relief that plaintiffs may request or that the Court may order.)

2. The named plaintiffs and class members continue to seek a declaratory judgment, payment of lost EB and FSC benefits, re-adjudication of their claims to EB and/or FSC, notice relief, and/or such other retroactive relief as the Court would allow. Therefore, they do not agree to waive, release

or in any way compromise their claims for retroactive relief.

3. The parties agree that they will litigate the issue of IDES' and/or USDOL's liability for retroactive relief. If they have not already done so, IDES and/or USDOL will move for dismissal as to the issue of their liability for benefits or re-adjudication of the claims within 30 days of the date hereof.

B. Agreement Promptly to Pay Retroactive Relief for Some Claimants

1. IDES and/or the USDOL agree to reconsider payment of benefits to those claimants who, as of the date of this partial settlement order, have pending cases in a county circuit court in Illinois, a district of the Illinois Appellate Court, any of the adjudicatory tribunals of IDES or any other court or similar administrative agency which adjudicates IDES' liability for EB or FSC.

In reconsidering these claims, IDES will consider whether the claimant conducted a work search consistent with the notice(s) (s)he actually received of his/her work search responsibilities. In making these determinations, IDES can look at the actual work search information that a claimant submitted, but a claimant's failure to comply with an unnoticed rule cannot constitute a basis for denial. Given the number of years which have passed since the work search certifications were completed, a claimant's failure to remember information not contained on the certification form cannot serve as a basis for denial. If a claim is approved, all outstanding weeks of EB and/or FSC that might have been paid will be paid whether or not the claimant in question filed certification forms for weeks after the week in which (s)he was denied. If a claim is denied, a claimant will have the benefit of the existing appeal

rights under Sections 800, 801, 803 and 1100 of the Illinois Unemployment Insurance Act, Ill. Rev. Stat. ch. 48 §§470, 471, 473, 520, and the Illinois Administrative Review Law, Ill. Rev. Stat. ch. 110, §§3-101 *et seq.*

2. IDES' agreement to reconsider payment of benefits, as provided in subsection IV.B hereof, shall not be construed as an admission as to any other liability for retroactive relief, and neither IDES nor the USDOL shall be limited in the presentation of any argument or defense to the plaintiffs' claims for retroactive relief as described in subsection IV.A by having agreed to the relief provided in subsection IV.B.

V. BINDING NATURE OF DECREE

This partial settlement order is binding upon the parties, their predecessors and successors in office, agents, employees, and persons in active concert or participation with them, but nothing in this partial

settlement order shall bind the USDOL or IDES to any matter not expressly agreed to in this partial settlement order or required by this partial settlement order and nothing herein shall be construed as violative of the decrees entered in *Soto v. Johnson*, 74 C 547 (N.D. Ill. 1977).

VI. RETAINED JURISDICTION AND ATTORNEYS' FEES

The Court shall retain jurisdiction over this cause for the purposes of: A) adjudicating the issue of IDES' and/or USDOL's liability for retroactive relief pursuant to paragraph IV.A hereof; B) adjudicating a petition for fees for work completed, if the parties have not agreed thereto, and/or for fees for the claims for retroactive relief, and/or for work completed after the date that this Partial Settlement Order is entered; and C) enforcement of this Partial Settlement Order and of any remedial order that might arise

from the adjudication of IDES' and/or USDOL's liability for retroactive relief.

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NO. 83 C 3116 **PARTIAL SETTLEMENT ORDER**

DATED: 8/15/90

ENTER: _____
FRANK H. EASTERBROOK
District Court Judge
pursuant to General
Rule 2.30E

EXHIBIT A

STATE OF ILLINOIS
DEPARTMENT OF EMPLOYMENT SECURITY

Si no puede leer este aviso, mire al reverso.

CLAIMANT'S WORK SEARCH RESPONSIBILITIES AND OTHER REQUIREMENTS FOR EXTENDED BENEFITS

The Extended Benefits (EB) program has been established to provide unemployment insurance benefits to eligible claimants who have exhausted their benefits on regular unemployment insurance (UI) claims. The program became effective on _____. Your EB weekly benefit amount will be the same as your regular weekly benefit amount. The following is a list of requirements that you must meet to be eligible for EB. If you do not understand any of the requirements, you should contact your local office immediately for a further explanation of these requirements. To be eligible for EB:

1. YOU MUST CONDUCT AN APPROPRIATE WORK SEARCH AS DISCUSSED BELOW:

a. You must register for work with the Illinois Job Service;

b. Every two weeks, you must report your work search on a certification form. The work search must include: a list of employers contacted with the names of the persons contacted and their telephone numbers or addresses; the dates of your contacts; your methods of contact; the kind of work you applied for; and the results of your contacts.

c. You are required to make a systematic and sustained effort to find work:

1) Your efforts to find work must be continuous throughout the week. On each normal work day, you must take some positive action to find work. If there is a day in which

you make no employer contacts, you must, for example, prepare a resume, contact a union or professional organization, attend an employment seminar, review the Illinois Job Service listings, etc.;

2) Your health or physical condition must be such that you are able to search for and perform work;

3) Your personal or domestic circumstances must permit you to search for and acdept work. For example, if you need child care to allow you to look for work, you must arrange for such care;

4) You must look for work that pays as little as the minimum wage or your weekly benefit amount including any supplemental unem-

ployment benefits (SUB PAY), whichever is more;

5) You must look for work that requires you to travel one way as long as 90 minutes from home to work. This may require you to use alternative means of transportation;

6) If you look for work in an occupation that uses more than one shift, you must apply for and accept any shift that is available;

7) You may continue to look for work in your customary occupation, but you may not limit your search solely to jobs in that occupation. For example, if you are a construction worker, you can look for work in the construction industry, but you must also look for other kinds of work;

8) Your work search methods must be realistic and appropriate considering the type of work you are seeking. For example, a factory worker does not ordinarily find employment by sending out resumes or by making phone calls, but applies in person;

9) Your search must be thorough. Repeated contacts with the same employer are not acceptable unless there is a reasonable prospect of obtaining work with that employer. If you are a union member, you cannot limit your contacts to the union hiring hall.

d. The systematic and sustained work search requirements do not apply to you if you are attending a training course approved by the Director of the Illinois Department of Employment Security. If you fail

to accept or continue in training which has been approved by the Director of the Illinois Department of Employment Security, you EB payments will be terminated if you do not make a systematic and sustained work search.

e. If you do not have a definite offer to begin work within four weeks you will be expected to accept any offer of work you are capable of doing.

IF YOU CLAIM EB FOR A WEEK WHEN YOU DO NOT MEET THE ABOVE REQUIREMENTS, YOU WILL BE INELIGIBLE FOR ALL FUTURE EB PAYMENTS UNTIL YOU HAVE WORKED AT LEAST 4 SEPARATE WEEKS AND HAVE EARNED AT LEAST 4 TIMES YOUR WEEKLY BENEFIT AMOUNT.

OTHER REQUIREMENTS:

2. You must also have exhausted your regular, interstate or combined wage claim. Your exhausted claim must have

a benefit year ending date of _____ or later.

3. You must also have met all of the eligibility requirements for the receipt of regular unemployment insurance benefits.

4. You must also have base period wages outside your highest quarter equal to or greater than 1-1/2 times your highest quarter wages.

Este aviso incluye informacion importante respecto a su derecho a recibir los beneficios extendidos de desempleo. Si usted no entiende este aviso es necesario que busque a alguien que se lo explique. Si necesitase ayuda adicional acuda inmediatamente a la oficina local en donde hizo su reclamacion de beneficios y pida que se lo expliquen.

307 EB NOTICE TO REPORT TO LOCAL OFFICE

FOR EXTENDED BENEFITS INTERVIEW

NOTICE TO REPORT TO LOCAL OFFICE

Si no puede leer este aviso,

mire al reverso

A question has been raised regarding your eligibility for extended unemployment insurance benefits under Section 409 of the Illinois Unemployment Act.

To resolve this question, it will be necessary for you to report for an interview on (Tickler Date) at DATA 27 Tickler Time. (If you reside outside the State of Illinois, report immediately to the nearest unemployment insurance office in the area you reside.)

YOU SHOULD BE PREPARED TO DISCUSS THE FOLLOWING ISSUE OR ISSUES:

-- whether you exhausted your regular, interstate, or combined wage claim.

__ whether your exhausted claim had a benefit year ending date of _____-___ or later.

-- whether you have met all of the requirements for the receipt of regular unemployment insurance benefits.

-- whether you have met all of the requirements for the receipt of regular unemployment insurance benefits.

-- whether you were paid base period wages outside your highest quarter equal to or greater than 1-1/2 times your highest quarter wages.

-- whether you registered for work with the Illinois Job Service.

-- whether you reported your work search on your bi-weekly certification form, including: a list of employers contacted with the names of the persons contacted and their phone numbers or addresses; the dates of your contacts; your methods

of contact; the kind of work you applied for; and the results of your contacts.

-- whether your efforts to find work were continuous throughout the week or weeks in question.

-- whether your health or physical condition enabled you to search for and perform work.

-- whether your personal or domestic circumstances permitted you to search for and accept work.

-- whether you looked for work that pays as little as the minimum wage or your weekly benefit amount.

-- whether you looked for work as much as 90 minutes one way from home to work and considered alternative means of transportation.

-- whether you looked for work on every available shift.

-- whether you looked for work outside your customary occupation.

-- whether your work search methods are realistic considering the type of work you were seeking.

-- whether your work search was limited to contacts with a union hiring hall.

-- whether your work search was limited to repeated contacts with the same employer(s) when there was no reasonable prospect of obtaining work with that employer(s).

-- whether you accepted or continued training approved by the Director of the Illinois Department of Employment Security.

-- whether you rejected a job offer for work you are capable of doing.

-- Free Form

Este aviso incluye informacion importante respecto a su derecho a recibir los beneficios

extendidos de desempleo. Si usted no entiende este aviso es necesario que busque a alguien que se lo explique. Si necesitase ayuda adicional acuda inmediatamente a la oficina local en donde hizo su reclamacion de beneficios y pida que se lo expliquen.

APPEALS NOTICE

Section of the Act: 409

Issue: Eligibility for Extended Benefits

-- whether the claimant exhausted his regular, interstate, or combined wage claim.

-- whether the claimant's exhausted claim had a benefit year ending date of _____ or later.

-- whether the claimant was paid base period wages outside his highest quarter equal to or greater than 1-1/2 times his highest quarter wages.

-- whether the claimant registered for work with the Illinois Job Service.

-- whether the claimant reported his work search on his bi-weekly certification form.

-- whether the cliamant included, in the report of his work search, a list of employers contacted with the names of

the persons contacted and their phone numbers or addresses; the dates of your contacts; your methods of contact; the kind of work you applied for; and the results of your contacts.

-- whether the claimant's efforts to find work were continuous throughout the week(s) in question.

-- whether the claimant's health or physical condition enabled him to search for and accept work.

-- whether the claimant's personal or domestic circumstances permitted him to search for and accept work.

-- whether the claimant looked for work paying as little as the minimum wage or the claimant's weekly benefit amount.

-- whether the claimant looked for work as much as 90 minutes one way from home to work and considered alternative means of transportation.

-- whether the claimant looked for work on every available shift.

-- whether the claimant looked for work outside his customary occupation.

-- whether the claimant's work search methods were realistic considering the type of work he was seeking.

-- whether the claimant's work search was limited to contacts with a union hiring hall.

-- whether the claimant's work search was limited to repeated contacts with the same employer(s) when there was no reasonable prospect of obtaining work with that employer(s).

-- whether the claimant accepted or continued training approved by the Director of the Illinois Department of Employment Security.

-- whether the claimant rejected a job offer for work he was capable of doing.

EXHIBIT C

-- Free Form